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Legislative Assembly of Ontario

First Session, 41st Parliament

Official Report of Debates (Hansard)

Thursday 23 October 2014

Standing Committee on Justice Policy

Organization

Assemblée législative de l'Ontario

Première session, 41^e législature

Journal des débats (Hansard)

Jeudi 23 octobre 2014

Comité permanent de la justice

Organisation

Chair: Shafiq Qaadri Clerk: Tamara Pomanski Président : Shafiq Qaadri Greffière : Tamara Pomanski

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 23 October 2014

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 23 octobre 2014

The committee met at 0903 in committee room 1.

ELECTION OF CHAIR

The Clerk of the Committee (Ms. Tamara Pomanski): Good morning, honourable members—nice to see you. It is my duty to call upon you to elect a Chair. Are there any nominations? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I nominate MPP Shafiq

Oaadri of Etobicoke North as Chair.

The Clerk of the Committee (Ms. Tamara Pomanski): Does the member accept the nomination?

Mr. Shafiq Qaadri: I'm honoured to accept. Thank

you.

The Clerk of the Committee (Ms. Tamara Poman-

ski): Are there any further nominations?

There being no further nominations, I declare the nominations closed and Mr. Qaadri elected Chair of the committee.

Le Président (M. Shafiq Qaadri): Merci beaucoup, mes collègues. Je voudrais vous remercier pour votre confiance. Thank you, colleagues, for this distinct honour.

ELECTION OF VICE-CHAIR

The Chair (Mr. Shafiq Qaadri): Proposals, election of Vice-Chair? Are there nominations? Ms. Martins.

Mrs. Cristina Martins: I'd like to move that Mr. Berardinetti be appointed Vice-Chair of the Standing Committee on Justice Policy.

The Chair (Mr. Shafiq Qaadri): Thank you. A motion has been moved by Ms. Martins. Is there any debate on this particular motion? Seeing none, are members ready to vote? All those in favour of Mr. Delaney's—

Interjection: Berardinetti.

The Chair (Mr. Shafiq Qaadri): Sorry—Mr. Berardinetti's election as Vice-Chair? All opposed? Mr. Berardinetti, I congratulate you on your election as Vice-Chair.

Mr. Lorenzo Berardinetti: Thank you, Mr. Chair.

APPOINTMENT OF SUBCOMMITTEE

The Chair (Mr. Shafiq Qaadri): Colleagues, may I have a motion to move the appointment of a subcommittee on committee business.

Mr. John Yakabuski: Yes. I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair or at the request of any member thereof to consider and report to the committee on the business of the committee;

That the presence of all members of the subcommittee

is necessary to constitute a meeting; and

That the subcommittee be comprised of the following members: the Chair as Chair, Mr. Cimino, Mr. Delaney and Mr. Smith; and

That substitution be permitted on the subcommittee.

The Chair (Mr. Shafiq Qaadri): Are there any questions, comments or debate on this particular motion for the subcommittee appointment?

Seeing none, those in favour of subcommittee as read, if any? Those opposed? Thank you. Subcommittee is

duly appointed as itemized.

Thank you, colleagues. That's the order of business.

BRIEFING

The Chair (Mr. Shafiq Qaadri): We now have a briefing by our esteemed Dr. Parker.

Mr. Jeff Parker: Hi, everyone. For those who don't know me, I'm Jeff Parker, a research officer with the Legislative Research Service. There will be myself or someone else in this chair for all your committee meetings. We're here to not only assist you with any research questions you may have, but we also assist the committee in drafting any and all reports at their direction. So if you have any further questions, I'm happy to answer them whenever you need it.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr.

Parker, Mr. Potts.

Mr. Arthur Potts: The Chair referenced you as a doctor. Doctor in?

Mr. Jeff Parker: Pardon me?

Mr. Arthur Potts: I think the Chair referenced you as a doctor.

Mr. Jeff Parker: I have my PhD in political science.

Mr. Arthur Potts: Oh, good for you.

The Chair (Mr. Shafiq Qaadri): In fact, not only does he have a PhD in political science, he happens to have his thesis in front of him just to remind us.

But in any case, are there any further questions?

Interjection: No.

The Chair (Mr. Shafiq Qaadri): Ms. Pomanski, our honourable Clerk.

The Clerk of the Committee (Ms. Tamara Pomanski): Welcome back, members. Nice to see new faces and old. We're going to have a great time here in justice policy.

Mr. John Yakabuski: I'm the old. Returning faces or old?

The Clerk of the Committee (Ms. Tamara Pomanski): Returning faces; I'm a returning face, too.

For some who have never sat on this committee before, justice policy is one of the policy field committees, one of three such in the legislature. The House may refer bills or matters before this committee for its consideration. In addition, the committee may conduct self-directed studies in accordance with the standing orders.

A resource binder was sent to you with detailed information on the procedural and administrative practices of the committee. That was sent in the summertime. Let me

know if you didn't receive it. My contact information is on the last page, along with my assistant's. Again, any questions or concerns, I'm here, and my role is to provide impartial and confidential advice on procedural and administrative matters.

Welcome to the committee, and I look forward to working with you all.

The Chair (Mr. Shafiq Qaadri): Just before we conclude, if there are no further comments, I think I'd like to congratulate all the members and the staff of this committee. I think, as all of us will know, we've gone through a whirlwind here, and we're still standing to tell the tale.

So if there's no further business—

Mr. Arthur Potts: I'd like to move adjournment.

The Chair (Mr. Shafiq Qaadri): Any debate on that particular motion? Any comments? The motion is accepted, and committee is now adjourned.

The committee adjourned at 0908.





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Vice-Chair / Vice-Président

Mr. Lorenzo Berardinetti (Scarborough Southwest / Scarborough-Sud-Ouest L)

Mr. Lorenzo Berardinetti (Scarborough Southwest / Scarborough-Sud-Ouest L)
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Mr. John Yakabuski (Renfrew-Nipissing-Pembroke PC)

Clerk / Greffière

Ms. Tamara Pomanski

Staff / Personnel

Mr. Jeff Parker, research officer, Research Services

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Thursday 30 October 2014

Standing Committee on Justice Policy

Members' privileges



Chair: Shafiq Qaadri Clerk: Tamara Pomanski

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STANDING COMMITTEE ON JUSTICE POLICY

Thursday 30 October 2014

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 30 octobre 2014

The committee met at 1403 in committee room 1.

MEMBERS' PRIVILEGES

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Welcome, colleagues, to the justice policy committee, officially convened on Thursday, October 30. I appreciate all members responding to the call for this meeting on relatively short notice.

Committee business is now before us. Are there any—

ves, Mr. Delaney?

Mr. Bob Delaney: Thank you, Chair. I have two motions to move, and I'll seek the indulgence of my colleagues. Would you like me to move them both—if you wish to have some time to discuss them, then both will be on the table—or would you like to do them sequentially?

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns.

Mr. Peter Tabuns: I have no difficulty with you moving both. As I've said previously, I'll ask for a 15-minute recess so I can consult with my folks.

The Chair (Mr. Shafiq Qaadri): Fine. Any com-

ments, gentlemen?

Mr. John Yakabuski: We're in concurrence with

The Chair (Mr. Shafiq Qaadri): Okay. Mr. Delaney. Mr. Bob Delaney: Okay. Then, Chair, the first motion reads as follows:

I move that, pursuant to standing order 111(a), the Standing Committee on Justice Policy report its observations and recommendations on the Ministry of Government and Consumer Services concerning the record-keeping practices of ministries and staff of the Ontario government.

The Chair (Mr. Shafiq Qaadri): Your second

motion, Mr. Delaney?

Mr. Bob Delaney: Thank you, Chair. The second motion reads:

I move that, pursuant to standing order 111(a), the Standing Committee on Justice Policy report its observations and recommendations on the Ministry of Energy concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants.

The Chair (Mr. Shafiq Qaadri): Thank you. Now, do I take it that you'd like the recess now, or would you

like to make some comments, Mr. Delaney?

Mr. John Yakabuski: Perhaps we could have just a couple of quick questions?

Mr. Peter Tabuns: Yes. That would be useful for us.

Mr. Bob Delaney: Okay.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Tabuns, then Mr. Yakabuski.

Mr. Peter Tabuns: Reports to the Ministry of Energy and reports to the Ministry of Government—sorry. We're reporting back to the Legislature. Correct?

Mr. Bob Delaney: Correct.

Mr. Peter Tabuns: And why the Ministry of Government and Consumer Services in particular, in regard to

record-keeping practices?

Mr. Bob Delaney: Because record-keeping practices are the domain of that particular ministry and not the Ministry of Energy. It's worth noting that, while record-keeping practices were not in and of themselves part of the committee's original mandate from the House, it was, in the last Parliament, the will of the majority of the committee, and of my good friends opposite, that we spend some quality time considering that. As the committee reports its findings, it should report them to the ministry which either has or will continue to enact changes and improvements.

Mr. Peter Tabuns: I'm assuming that that report to the Ministry of Government and Consumer Services will

be a public report.

Mr. Bob Delanev: Correct.

Mr. Peter Tabuns: As will the other, to the Ministry

Mr. Bob Delaney: Correct.

Mr. Peter Tabuns: So, in other words, they can be tabled in the Legislature as well.

Mr. Bob Delaney: Correct.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. The floor now goes to Mr. Yakabuski.

Mr. John Yakabuski: He has answered some of my questions—

The Chair (Mr. Shafiq Qaadri): As he often does.

Mr. John Yakabuski: As he often does, and sometimes you do, Chair.

So are we talking about two separate reports here?

Mr. Bob Delaney: We can combine them into a report. The individual reports, of course, will be addressed to the applicable ministries. All we're trying to do is to make sure that each ministry receives a discrete document pertaining to the observations and recommen-

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dations of the committee pertaining to issues within the purview of that ministry.

Mr. John Yakabuski: Because this is our first meeting in some time: Are these motions in keeping with the mandate motions of the committee?

Mr. Bob Delaney: In fact, what the two motions recognize is the original mandate of the committee, which was to make recommendations back to the Legislature on the committee's findings on the tendering, planning, commissioning, cancellation etc.—

Mr. John Yakabuski: Yes. Do we have a copy? Do we have that?

The Chair (Mr. Shafiq Qaadri): Actually, Mr. Yakabuski, just let me intervene for a moment. Because we are essentially reconvening after the new session for the first time etc., we essentially have, at this moment, no mandate. However, if you notice in the motions, very strategically placed, it says, "Pursuant to standing order 111(a)." That's essentially the referral of this material to us.

Mr. John Yakabuski: Understood. I recognize that. I mean, they're two separate Parliaments; one died and one has been born. But we must have the record of the original mandate. I'd just like to be able to compare them.

The Clerk of the Committee (Ms. Tamara Pomanski): Actually, I do have a copy of the original mandate from the last Parliament.

Mr. John Yakabuski: Okay.

The Clerk of the Committee (Ms. Tamara Pomanski): I can get a copy for you—

The Chair (Mr. Shafiq Qaadri): Do you want me to read it, to refresh everyone's mind?

Mr. John Yakabuski: Yes. I just want to make sure that it's in keeping with what the mandate of the committee was when we were first tasked, so that it's consistent—

The Chair (Mr. Shafiq Qaadri): A perfectly valid request. We are currently locating the mandate.

So the previous mandate of the previous justice policy committee in the previous Parliament—would you like me to read the two pages? I'm happy to do that.

Mr. John Yakabuski: That's the whole thing? If you just pass it over, I can take a look at it.

The Chair (Mr. Shafiq Qaadri): I'd be honoured to do so.

Mr. John Yakabuski: Thank you very much. Do you want a copy, Peter?

Mr. Peter Tabuns: I would.

Mr. John Yakabuski: Okay. I can give you this in a minute, if you want.

Mr. Peter Tabuns: Sure, unless the Clerk has another copy.

Mr. John Yakabuski: Okay. I appreciate this. But at each one of our meetings, there was also a much shorter—

The Clerk of the Committee (Ms. Tamara Pomanski): An agenda.

Mr. John Yakabuski: That's right, on the agendas, which, from time to time—

The Chair (Mr. Shafiq Qaadri): You would appreciate the shorter version?

Mr. John Yakabuski: —from time to time, Mr. Delaney would call a point of order if he thought I was drifting.

Mr. Bob Delaney: Only when you were actually present.

Mr. John Yakabuski: So that's the one that I wanted to compare it with as well.

The Chair (Mr. Shafiq Qaadri): All right. The collective wisdom here is earnestly asking for a recess in order to locate this shorter version. So a 10-minute recess?

Mr. Bob Delaney: Do you want to have this as your recess, or do you want to have two in a row? It's up to you.

Mr. Peter Tabuns: Well, it would be useful for us to have that documentation. I would like a 15-minute recess, in any event, to go and talk with my House leader.

The Chair (Mr. Shafiq Qaadri): Fine. So a 10-minute recess—

Mr. Peter Tabuns: Fifteen.

The Chair (Mr. Shafiq Qaadri): —for the document, to be followed by a 15-minute recess further.

Mr. Peter Tabuns: Fine.

The Chair (Mr. Shafiq Qaadri): Fine. Ten minutes. The committee recessed from 1412 to 1423.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We reconvene officially. Our able Clerk has distributed the short version, the précis version, of the mandate. It was on the agenda that there would be another 15-minute recess, I think, called by Mr. Tabuns. Mr. Tabuns, are you still going to call that recess?

Mr. Peter Tabuns: I need no further recess, Chair, but I do have a question.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Yakabuski, we just want to be clear that you're cool with not having this further 15-minute recess?

Mr. John Yakabuski: "Cool" would be the word, Chair. Yes, "cool" would be the word.

The Chair (Mr. Shafiq Qaadri): Excellent. All right; fair enough.

So, Mr. Tabuns, you have a question. Please proceed.

Mr. Peter Tabuns: I just want to understand whether or not adoption of either of these motions would preclude further calling of witnesses before this committee.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. I will seek an answer.

For some kind of theoretical reasons, we'll rule on that once these pass—if they pass, should they pass.

Mr. Peter Tabuns: I actually, Chair, have to ask you to give us a ruling at this point because it may affect the way I vote.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns.

Mr. John Yakabuski: I concur.

The Chair (Mr. Shafiq Qaadri): And we have yet another concurrence from Mr. Yakabuski. Fair enough.

Mr. Tabuns, my comprehension of what's happening currently is that these motions would need to pass—should they pass—and then the subsequent motion, which you haven't officially presented to the committee—

Mr. Peter Tabuns: That's an amendment.

The Chair (Mr. Shafiq Qaadri): I'm sorry, an amendment—would be debatable.

Mr. John Yakabuski: We're just asking the question if—

The Chair (Mr. Shafiq Qaadri): Understood. If

these motions pass—

Mr. John Yakabuski: My understanding is that Mr. Tabuns is simply asking the question that, do these motions, as they stand—would they, if passed, preclude us from calling other witnesses while the report writing is going on, or would we still be allowed to call witnesses while the report writing stage is going on?

The Chair (Mr. Shafiq Qaadri): Thank you. The

question has been understood.

Mr. Bob Delaney: Chair?

The Chair (Mr. Shafiq Qaadri): The question has been understood, but not necessarily the answer.

Anyway, Mr. Delaney.

Mr. Bob Delaney: I understand the reason that my colleagues are asking the question, so perhaps I can provide a little bit of clarity on it. The two motions before us seek what is to be done. The motion that the government needs to introduce following the passage of these, as alluded to by the Clerk, will provide clarity onto the how. So the question raised by Mr. Yakabuski and Mr. Tabuns is a "how" question, but not a "what" question, and these two motions before us are, "What is it that we're going to do?"

The Chair (Mr. Shafiq Qaadri): I think, procedurally, we are not prepared to rule on something until it is actually presented.

So, with that, do we wish to offer Mr. Tabuns the floor

to present his amendment?

Interjection.

The Chair (Mr. Shafiq Qaadri): Should it be the will of the committee to debate the motion? Yes, Mr. Tabuns.

Mr. Peter Tabuns: Mr. Chair, just going back: I need to know whether you would rule something out of order. I can count, and I have some certainty that I'd probably get two votes voting with me, but I have a great deal of confidence that there will be five votes against me. I want to know, Chair, whether you would rule a motion out of order in the future that would call for witnesses, or would you allow that motion to go forward and be voted on.

The Chair (Mr. Shafiq Qaadri): I would like to

know, too, Mr. Tabuns.

Interjections.

The Chair (Mr. Shafiq Qaadri): All right. We will need a recess—10 minutes, approximately.

Mr. Peter Tabuns: Fine.

Mr. John Yakabuski: Can we do it in five?

Mr. Peter Tabuns: Give him 10.

Mr. John Yakabuski: Okay.

The Chair (Mr. Shafiq Qaadri): Ten minutes.

The committee recessed from 1428 to 1439.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. So now, theory into practice: We will now deal with motion 1 as originally read by Mr. Delaney, which is the one that refers to the Ministry of Government and Consumer Services.

Mr. Peter Tabuns: Mr. Qaadri?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Tabuns.

Mr. Peter Tabuns: Mr. Chair, before you proceed, it is my understanding—and correct me if I'm wrong—that adoption of the two motions before us would not preclude, would not mean a ruling out of order of a future motion to call witnesses.

The Chair (Mr. Shafiq Qaadri): Correct.

Mr. Peter Tabuns: Fine.

The Chair (Mr. Shafiq Qaadri): If the Chair can make a connection, which you will no doubt be inspired to do.

Mr. Peter Tabuns: I will try to inspire you. I'll do my best to inspire you.

Mr. John Yakabuski: I'll work with you.

The Chair (Mr. Shafiq Qaadri): So we now have motion 1 before the floor. Are there comments, questions before we move to the vote?

Mr. Peter Tabuns: Sorry, this is the-

The Chair (Mr. Shafiq Qaadri): Motion 1, the one that refers to the Ministry of Government Services. Mr. Delaney, would you kindly move it again?

Mr. Bob Delaney: Just for clarity, Chair. The motion before the floor reads as follows: I move that, pursuant to standing order 111(a), the Standing Committee on Justice Policy report its observations and recommendations on the Ministry of Government and Consumer Services concerning the record-keeping practices of ministries and staff of the Ontario government.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Debate, questions, comments? Otherwise we proceed to the vote. Mr. Yakabuski or Mr. Tabuns, the floor? Fair enough. Those in favour of motion 1? Those opposed? Motion 1 carries.

Mr. Delaney, motion 2, please.

Mr. Bob Delaney: Thank you, Chair. The motion before the floor reads as follows: I move that, pursuant to standing order 111(a), the Standing Committee on Justice Policy report its observations and recommendations on the Ministry of Energy concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants.

The Chair (M. Shafiq Qaadri): Merci, monsieur

Delaney.

Avant le vote, des questions? Débat? Pas du tout?

If not, we proceed to the vote. Those in favour of motion 2 as read? Those opposed? Motion 2 carries.

The floor is now open. Mr. Delaney.

Mr. Bob Delaney: Chair, I'd like to move the following:

I move that the committee consider its standing order 111 study on the Ministry of Energy and its standing order 111 study on the Ministry of Government and Consumer Services concurrently and that the committee combine its findings into a single report to the House;

That the committee consider the applicable oral and written submissions made to the Standing Committee on Justice Policy in the 40th Parliament during its

consideration of these matters;

That the committee enter in camera meetings for the purpose of report writing and that two staff members from each party be permitted to attend in camera meetings;

That in the event a report has not yet been approved by the committee by December 11, 2014, the committee proceed to consider other matters before the committee;

That any member of this committee wishing to provide written recommendations to the Clerk of the Committee with respect to the outline of the report do so within one week after the passage of this motion; and

That any member of this committee wishing to provide written recommendations for the content of the report to the Clerk of the Committee do so within three weeks of the passage of this motion.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney.

Comments? Mr. Yakabuski and then Mr. Tabuns.

Mr. John Yakabuski: Thank you, Chair. The last two paragraphs—"that any member of this committee wishing to provide written recommendations ... do so within one week after the passage"—that would be just an undertaking that we will be providing recommendations?

Mr. Bob Delaney: That would be the provision of the recommendations. The first clause—that would be clause number 5—is for all practical purposes the table of contents; in other words, one week to talk about the table of contents and three weeks from the passage of this motion with regard to the content.

The Chair (Mr. Shafiq Qaadri): I think what Mr. Yakabuski is asking—I'm not sure if that's what you're answering—is: Do you want the full comments finished within that time frame or simply express the intention to?

Mr. Bob Delaney: Finished.

Mr. John Yakabuski: Finished—within three weeks. We need to have our contents for this report in three weeks?

Mr. Bob Delanev: Yes.

Mr. John Yakabuski: And then that would be-

Mr. Bob Delaney: Remember, you've got a free week in there in constit week, too.

Mr. John Yakabuski: Yes, I realize that, but we would then be voting as to whether those contents would be part of the report?

Mr. Bob Delaney: At that point, you should provide your comments to the Clerk of the Committee, and then we can combine those findings into a report.

Did I answer that question fully?

The Chair (Mr. Shafiq Qaadri): Just a moment: Mr. Tabuns, you have the floor. Dr. Parker wants to say something, and then Mr. Delaney.

Mr. Peter Tabuns: I just want to make sure: Is there a preclusion of provision of a minority report? If we don't accept this report as written by the committee, as voted on by the committee, I've assumed that a minority report could be tacked on, as is fairly common. I want to make sure this motion doesn't prevent that from happening.

Mr. Bob Delaney: Absolutely, it does not prevent that. I cannot imagine any reason you would wish to disagree with the government, but in the remote event that

you do---

The Chair (Mr. Shafiq Qaadri): Just to be clear, there is no such thing as a minority report—only in Hollywood. If there is dissent—

Mr. Bob Delaney: A dissenting report.

The Chair (Mr. Shafiq Qaadri): —then it will be dissenting opinion. That will also be captured.

Mr. Peter Tabuns: Fine: dissenting opinion. Good language. I appreciate it.

Mr. John Yakabuski: In the report?

Mr. Bob Delaney: Yes.

Mr. John Yakabuski: It would be captured in the report.

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Bob Delaney: So in the remote event that the two opposition parties—

Interjection.

The Chair (Mr. Shafiq Qaadri): Dissenting opinions received from each caucus individually, as I understand, will be captured in the report—

The Clerk of the Committee (Ms. Tamara Pomanski): Can be—

The Chair (Mr. Shafiq Qaadri): Can be captured in the report—most likely, I would presume, in an appendix?

The Clerk of the Committee (Ms. Tamara Pomanski): They're at the end. They're at the back.

The Chair (Mr. Shafiq Qaadri): They're at the end, at the back, not necessarily in an appendix.

Mr. Peter Tabuns: But they're where I always go first when reading a report.

Mr. John Yakabuski: Get to the conclusions, right? The Chair (Mr. Shafiq Qaadri): Mr. Parker.

Mr. Jeff Parker: Thank you, Chair. Because the research officer nominally has the responsibility to assemble the recommendations of the committee, if you don't mind, Mr. Delaney, I'd just like to clarify a few things about your timeline, given that it's very specific. That would mean written recommendations on November 6, should the motion pass today. Now, from that date, would you then want certain elements drafted by the research officer, or would you be waiting until November 20, when recommendations are given, for these either to be assembled or edited in any form—consolidated? Just to get a sense of what you're expecting here.

Mr. Bob Delaney: Could you ask the various things that you're not sure of, and we'll take a brief recess? Let's make sure that we all understand what the motion truly does ask

truly does ask.

Were there any other things that you want clarification on?

Mr. Jeff Parker: The first thing is: Will you want certain sections, such as a summary of the witness testimony or those sorts of things, begun on November 6, once we have an idea of the elements that the members want included in the report?

Mr. John Yakabuski: There are two years of hearings on this thing. I don't know how we can do that.

Mr. Jeff Parker: The second thing is: When we get the recommendations, is the committee looking to have recommendations from all parties, perhaps ones that are from different perspectives, or will the committee be trying to edit it down to a single, coherent set of recommendations? The reason that's important is because if we get those recommendations on November 20, the next available time we will have to debate those recommendations as part of a consolidated draft, at the earliest, would be November 27, the next meeting, which would give us two weeks before the deadline. I'm just making sure that the committee has enough time to discuss these recommendations so that we are able to make the changes that you request and get you this document back by the deadline that we're trying to set on the motion here.

Mr. Bob Delaney: Okay. All right. Anything else?

Mr. Jeff Parker: I believe those are the two biggest things. I think the final thing, and Tamara can tell me if I'm stepping on her toes here: This simply has to be adopted by the committee on December 11, and not printed or translated or anything else? Because that adds another significant—

Mr. Bob Delaney: That is correct. It has to be adopted by the committee, but not at that time printed, translated and whatever else. Okay?

Mr. Jeff Parker: Okay. Thanks.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns.

Mr. Peter Tabuns: Given some staffing considerations that we're facing right now, and that is that people who have worked most closely on this file are off ill, I'd ask some timing changes: that, instead of one week to provide written recommendations, it be two weeks; and that the written recommendations—sorry, in the last paragraph—go from three to four weeks. And I have to ask: December 11, 2014—would the government be open to making that February 28, 2015?

Mr. Bob Delaney: Anything else?

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, are those theoretical questions or do you want those actually proposed as amendments—

Mr. Peter Tabuns: I propose them as amendments, but I've put them forward to ask the government if this is

something that they're open to.

Mr. Bob Delaney: So before you actually propose them as amendments, why don't we take a brief recess to explore some of the questions that you've raised? Then we'll come back and determine whether or not it would be a good idea for you to propose them as an amendment or whether there's something in there that we can find to work on.

Mr. Peter Tabuns: I think you might find it as a friendly amendment.

Mr. Bob Delaney: Yes.

The Chair (Mr. Shafiq Qaadri): Five minutes? Ten minutes?

Mr. John Yakabuski: Five.

Mr. Bob Delaney: I think five should be fine.

The Chair (Mr. Shafiq Qaadri): Five minutes.

The committee recessed from 1450 to 1459.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. The thread is where it is.

Mr. Bob Delaney: Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Delaney?

Mr. Bob Delaney: During the recess, I discussed with my colleagues, and the government wishes to move an amendment to its motion. The amendment is:

I move that in clause number 6, the text shall read: "report to the Clerk of the Committee do so within four weeks of the passage of this motion."

This changes the timeline from three weeks to four.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll need it in writing.

Mr. Bob Delaney: Yes.

The Chair (Mr. Shafiq Qaadri): So please write.

Interjections.

The Chair (Mr. Shafiq Qaadri): Do members need a copy of the amended motion or can we grasp the "three" to "four" changeover?

Mr. Peter Tabuns: We're good.

Mr. John Yakabuski: We're good.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns.

Mr. Peter Tabuns: I, too, have amendments, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): We need to deal with this amendment—

Interjection.

The Chair (Mr. Shafiq Qaadri): Is it an amendment to the amendment or is it an amendment to the motion?

Mr. Peter Tabuns: What's been put forward by Mr. Delaney, I have no difficulty with.

The Chair (Mr. Shafiq Qaadri): Fine. So we'll deal with Mr. Delaney's amendment, the change from three to four weeks. Is there any further discussion, debate, issues? Mr. Parker.

Mr. Jeff Parker: Just to clarify: That would make it November 27 as the due date for recommendations. At the danger of pre-empting the committee's wisdom, should the final deadline of the report not change, December 11? That would give us exactly one week to consider the actual draft report, because I could not guarantee you the draft of it before one week after the 27th. Even that is a very tight timeline, depending on what other elements you ask for in the report, which means we'd have December 4 and that it is. Again, I may be pre-empting the will of the committee, but I want to be clear on scheduling.

Mr. Bob Delaney: We will do our best to expedite your work and to make your job as easy as we can.

Mr. Jeff Parker: I serve the committee.

The Chair (Mr. Shafiq Qaadri): Any further issues on this amendment, "three" to "four"? Seeing none, those in favour of this amendment? Those opposed? This amendment carries. The original motion is now "within four weeks."

Mr. Tabuns.

Mr. Peter Tabuns: Chair, I move that the date of approval by the committee—I think that's in paragraph 4—be changed from December 11, 2014, to February 26, 2015, which is a Thursday.

The Chair (Mr. Shafiq Qaadri): Twenty fourteen, I presume.

Mr. Peter Tabuns: It's 2015.

Mr. John Yakabuski: February 2014 is gone. You can't bring it back.

Mr. Peter Tabuns: Yes. It was a good month.

The Chair (Mr. Shafiq Qaadri): Thank you. So December—sorry could you just—

December—sorry, could you just—

Mr. Peter Tabuns: From December 11, 2014, which is a month and a half from now—revise that to February 26, 2015.

The Chair (Mr. Shafiq Qaadri): Thank you.

Mr. John Yakabuski: That's a good amendment. That's one that I think anybody could support.

The Chair (Mr. Shafiq Qaadri): Thank you—and again, please, in writing.

Interjection.

The Chair (Mr. Shafiq Qaadri): Do the members need a copy of this amendment, this proposal? Or can we absorb the fact—

Interjections.

Mr. John Yakabuski: No, and I'm sure the other side sequally as—

The Chair (Mr. Shafiq Qaadri): Agile?

Mr. John Yakabuski: —attentive. They've been listening, right?

Mr. Bob Delaney: We understand the intent and the letter of the amendment.

The Chair (Mr. Shafiq Qaadri): Thank you. Is there any further issue, question, debate, comments on this particular amendment by Mr. Tabuns? To be clear, it's February 26, 2015.

Mr. Peter Tabuns: Recorded vote.

Ayes

MacLaren, Tabuns, Yakabuski.

Nays

Anderson, Berardinetti, Delaney, Naidoo-Harris, Potts.

The Chair (Mr. Shafiq Qaadri): Regrettably, the amendment is defeated.

Mr. Peter Tabuns: I didn't see that coming.

Mr. John Yakabuski: Me neither.

Mr. Peter Tabuns: I have a further amendment. The Chair (Mr. Shafiq Qaadri): Mr. Tabuns.

Mr. Peter Tabuns: That the committee call witnesses Laura Miller and Peter Faist to testify before the committee while the report writing process proceeds.

The Chair (Mr. Shafiq Qaadri): I understand that we do have this is in writing, all ready to be distributed.

Interjections.

The Chair (Mr. Shafiq Qaadri): The motion has been distributed. Mr. Tabuns, would you like to make any further comments before we open it up for others to do so?

Mr. Peter Tabuns: I would, and I will be brief. The actions related to the clearing of records on computers in the former Premier's office are of consequence to this committee and of consequence to its comments on record-keeping on the material that was provided to us. I think it's incumbent upon us, as we have previously, to call these witnesses before us. As you will remember in the past, Mr. Chair, these witnesses ultimately did agree to come before this committee. I think it's our job to complete that part of our interview.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr.

Tabuns.

Further comments? Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Mr. Chair. I want to thank my friend Mr. Tabuns for making this motion. I support it very, very strongly, and for the same reasons that he does.

I might want to add that it has been an issue that has been somewhat of a bone of contention between ourselves and the government side since the Parliament was convened in July. We have been consistent in our ask that we want this committee to finish its work, but it is beyond us how we can possibly finish that work if we don't hear from these two key witnesses. As Mr. Tabuns indicated, with one of the motions that the government themselves have voted pertaining to record-keeping practices, how can we possibly make sound recommendations on those record-keeping practices if we're not going to hear from the people who were most involved? They have the greatest understanding as to what happened with regard to the deletion of records in the Premier's office. So from our point of view, this is a necessary amendment, and we will be supporting it fully.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski.

Further comments? Mr. Delaney.

Mr. Bob Delaney: Thank you, Chair. The subject of this amendment is now the focus of an investigation by the OPP, which should pursue its investigation independently. This exact matter, having been previously debated and decided in the House—the government will not support this amendment.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Are there any further comments before we proceed to the vote on Mr. Tabuns's proposed amendment, as read?

Mr. Peter Tabuns: A recorded vote is all I ask.
The Chair (Mr. Shafiq Qaadri): A recorded vote.
Mr. Yakabuski

Mr. John Yakabuski: To Mr. Delaney's comments that this is the subject of an investigation by the OPP: Why would we want to complete this report prior to the completion of that OPP investigation? That could change dramatically, it could change materially, the findings of this committee with respect to the gas plant cancellation and relocation.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski.

We'll proceed to the vote. Any further comments? A recorded vote, as requested by Mr. Tabuns.

Ayes

MacLaren, Tabuns, Yakabuski.

Nays

Anderson, Berardinetti, Delaney, Naidoo-Harris, Potts.

The Chair (Mr. Shafiq Qaadri): The amendment falls.

If we are ready to proceed, we'll now vote on the main motion, as amended, unless there are further comments or questions.

Mr. Peter Tabuns: Just a recorded vote.

The Chair (Mr. Shafiq Qaadri): A recorded vote.

Ayes

Anderson, Berardinetti, Delaney, Naidoo-Harris, Potts.

Nays

MacLaren, Tabuns, Yakabuski.

The Chair (Mr. Shafiq Qaadri): The main motion, as amended, carries.

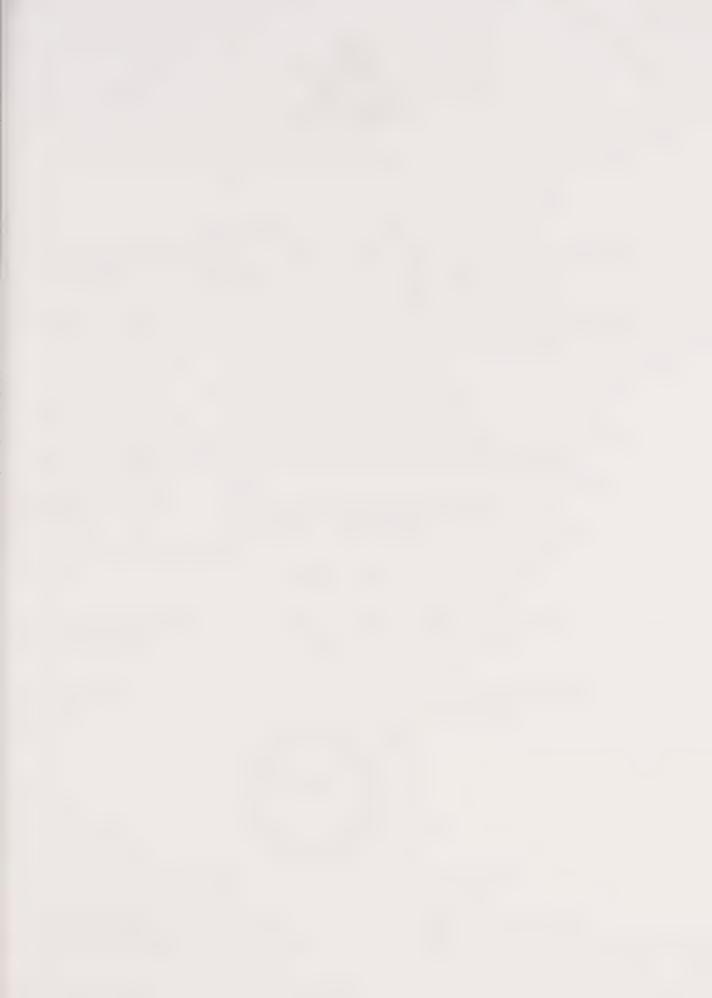
Is there any further official business before this committee?

Mr. Bob Delaney: Motion to adjourn.

The Chair (Mr. Shafiq Qaadri): Motion to adjourn? Thank you, colleagues. Adjourned.

The committee adjourned at 1508.





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Official Report of Debates (Hansard)

Thursday 26 March 2015

Journal des débats (Hansard)

Jeudi 26 mars 2015

Standing Committee on Justice Policy

Subcommittee report

Comité permanent de la justice

Rapport du sous-comité



Chair: Shafiq Qaadri Clerk: Tamara Pomanski Président : Shafiq Qaadri Greffière : Tamara Pomanski

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 26 March 2015

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 26 mars 2015

The committee met at 0904 in committee room 1.

The Vice-Chair (Mr. Lorenzo Berardinetti): The Standing Committee on Justice Policy is now in session. I want to wish a good morning to everybody.

SUBCOMMITTEE REPORT

The Vice-Chair (Mr. Lorenzo Berardinetti): The first item on the agenda here is the report of the subcommittee on committee business: Mrs. Martins.

Mrs. Cristina Martins: Your subcommittee on committee business met on Wednesday, March 25, 2015, to consider the method of proceeding on Bill 49, An Act with respect to immigration to Ontario and a related amendment to the Regulated Health Professions Act, 1991 and recommends the following:

(1) That the committee meet in Toronto on Thursday, April 2, and Thursday, April 16, 2015, to hold public

hearings.

- (2) That the Committee Clerk, in consultation with the Chair, post information regarding public hearings on the Ontario parliamentary channel, the Legislative Assembly website and on Canada NewsWire.
- (3) That interested parties who wish to be considered to make an oral presentation on Thursday, April 2, 2015, contact the committee Clerk by 5 p.m. on Tuesday, March 31, 2015.
- (4) That interested parties who wish to be considered to make an oral presentation on Thursday, April 16, 2015, contact the committee Clerk by 5 p.m. on Tuesday, April 14, 2015.

(5) That, if all requests to appear can be scheduled, the committee Clerk can proceed to schedule all witnesses on

a first-come, first-served basis.

(6) That, if there are more requests to appear than slots available, the Chair shall call a subcommittee meeting in order to adjust witness time slots in order to hear from all interested parties, if possible.

(7) That late requests be scheduled upon subcommit-

tee approval.

(8) That expert witnesses be invited upon subcommittee approval.

(9) That witnesses be scheduled in 10-minute intervals, with five minutes allotted for their presentation and five minutes for questions from committee members (one caucus per presentation, on a rotational basis).

(10) That, if possible, the Minister of Citizenship, Immigration and International Trade be invited to appear as the first witness, to make a presentation of up to five minutes, and three minutes per caucus allotted for ques-

(11) That the deadline for written submissions be Thursday, April 16, 2015, at 5 p.m.

(12) That, for administrative purposes, proposed amendments to the bill be filed with the committee Clerk by 5 p.m. on Tuesday, April 21, 2015.

(13) That the committee meet on Thursday, April 23, and Thursday, April 30, 2015, for clause-by-clause

consideration of the bill.

(14) That the research officer provide the committee with an overview of how Bill 49 would work with federal immigration rules, including changes to the Temporary Foreign Worker Program that take effect April 1, 2015, before the first day of public hearings.

(15) That the research officer provide the committee with a summary of presentations by 5 p.m. on Friday,

April 17, 2015.

I move that the subcommittee report be adopted.

The Vice-Chair (Mr. Lorenzo Berardinetti): Any questions or comments?

Mr. Bob Delaney: That sums it up.

Mr. Todd Smith: Sounds like our meeting yesterday. The Vice-Chair (Mr. Lorenzo Berardinetti): None?

All those in favour, then, of the subcommittee report?

All those opposed?

Carried.

Are there any other matters that you want to discuss? None?

The committee is adjourned.

The committee adjourned at 0908.

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Mr. Andrew McNaught, research officer, Research Services





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Thursday 16 April 2015

Standing Committee on Justice Policy

Ontario Immigration Act, 2015



Chair: Shafiq Qaadri Clerk: Tamara Pomanski

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Comité permanent de la justice

Loi de 2015 sur l'immigration en Ontario

Président : Shafiq Qaadri Greffière : Tamara Pomanski

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 16 April 2015

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 16 avril 2015

The committee met at 0900 in committee room 1.

ONTARIO IMMIGRATION ACT, 2015 LOI DE 2015 SUR L'IMMIGRATION EN ONTARIO

Consideration of the following bill:

Bill 49, An Act with respect to immigration to Ontario and a related amendment to the Regulated Health Professions Act, 1991 / Projet de loi 49, Loi portant sur l'immigration en Ontario et apportant une modification connexe à la Loi de 1991 sur les professions de la santé réglementées.

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice.

As you know, we're here to meet to consider Bill 49, An Act with respect to immigration to Ontario and a related amendment to the Regulated Health Professions Act, 1991.

LAW SOCIETY OF UPPER CANADA

The Chair (Mr. Shafiq Qaadri): I invite our first presenters, from the Law Society of Upper Canada, to please come forward and to please have a seat at the front. Introducing yourselves, they are Rob Lapper, CEO; Elliot Spears, general counsel; and Sheena Weir, director of public affairs.

Very briskly, five minutes to make your presentation and then five minutes for questions, with only one caucus per presenter. It will be enforced with military precision, beginning now.

Mr. Rob Lapper: Thank you, Mr. Chair. My name is Rob Lapper, as you've said, and I'm here with Ms. Sheena Weir, our director of public affairs, and Ms. Elliot Spears, our general counsel.

Le Barreau du Haut-Canada est l'organe indépendant de réglementation de plus de 47 000 avocates et avocats et plus de 7 000 parajuristes titulaires de permis en Ontario. Le barreau se réjouit de l'occasion qui lui est offerte de contribuer à l'étude par ce comité du projet de loi 49, la Loi de 2015 sur l'immigration en Ontario.

Today, the law society wishes to comment on three aspects of the bill that relate to the law society's mandate to regulate Ontario's lawyers and paralegals in the public interest. These three aspects are, firstly, safeguarding solicitor-client privilege; secondly, ensuring that the

bill's definition of a "representative" is drafted to be consistent with existing law as to who may act as a representative; and third, providing for continued dialogue between the government and the law society to ensure that areas of concurrent regulation in the new immigration system are addressed by having our regulatory spheres work in concert.

Turning to the first point on solicitor-client privilege, the bill requires representatives and recruiters to disclose information and expressly permits warrantless searches of representatives' premises in certain circumstances. These are set out in subsection 23(2).

As the definition of "representative" includes lawyers and licensed paralegals, these disclosure requirements and search powers would apply to lawyers, paralegals and their offices. Investigators would be able to obtain materials which would otherwise be privileged and confidential. Applied to lawyers and paralegals, these requirements are at odds with protections granted to clients through confidentiality and solicitor-client privilege.

As described in detail in our written materials, which you have, the Supreme Court of Canada has repeatedly emphasized the importance of privilege. It has stated that privilege "must remain as close to absolute as possible if it is to retain relevance." Privilege is accorded this high level of protection because our system of justice relies on full and frank communication between clients and their legal representatives. As the Supreme Court of Canada has also stated, "Without it"—the "it" referring to privilege—"access to justice and the quality of justice in this country would be severely compromised."

The law society would expect that the bill's provisions would not require disclosure of privileged information and that the protections set out by the courts to govern such searches would apply.

An amendment to the bill to make the protection of privileged information explicit would be appropriate. The law society has expertise in this area that we've frequently shared with the government in working on this kind of thing, and we would appreciate the opportunity to work with the government in this instance to develop an appropriate amendment.

Turning now to the second point, which relates to the definition of the term "representative" having regard to current law: As presently drafted, lawyers and licensed paralegals would be able to act as representatives.

The Law Society Act grants the law society the authority to regulate the practice of law and the provision of

legal services in Ontario. The law society is authorized to establish classes of licences, to determine the scope of activities authorized under each class of licence, and to impose limitations and restrictions on any class of licence.

In exercising its authority, the law society is guided by its functions and principles set out in its statutes, including ensuring that "all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide."

In Ontario, lawyers and paralegals practise law and provide legal services within the scope of activities—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Rob Lapper: —defined for them by the law society.

The third point is that the law society anticipates that there will be regulation coming out of this bill—concurrent regulation of lawyers and paralegals governed by the law society who would act as representatives. The law society would appreciate receiving more information about any contemplated regulatory oversight of representatives and any proposed regulation of persons acting as both recruiters and representatives.

Le Président (M. Shafiq Qaadri): Merci pour vos remarques introductoires. Maintenant je passe la parole à M. Smith of the PC caucus. Five minutes.

Mr. Todd Smith: Thank you, Mr. Lapper, for coming in and presenting to us today—and to Ms. Weir as well.

Can I ask, in your opening concerns about solicitorclient privilege, what would be the types of things that you would like to see in the legislation going forward if given the opportunity to work with the government when we make amendments at clause-by-clause in a couple of weeks?

Mr. Rob Lapper: I'm going to turn to Ms. Spears for that as she is the expert.

Ms. Elliot Spears: I think what we would do is draw your attention to the principles that were set out by the court in Lavallee and also confirmed in the most recent Supreme Court of Canada case that dealt with the moneylaundering legislation. We would encourage that sort of approach. We also have guidelines for law office searches, and we would also encourage the government to look at those.

Mr. Todd Smith: Okay. On the second point, which was the involvement of other professionals from the legal profession, can you expand a little bit? You have the time now to expand a little bit on what you mean in that section. I know your time was cut short so I'd like to give you a little bit more.

Mr. Rob Lapper: Thank you for the opportunity to do that. The point there really is that the law society defines the scope of practice for our various licensees, lawyers and paralegals. It would just be important that the bill recognize that the scope of practice is defined by the law society and not somehow either expanded or changed by the bill itself. To say that every licensee can

practise immigration law is not necessarily, I don't think, the intent of this bill. It would change the intent of what the Law Society Act is, which is to preserve to the law society the ability to define who can practise in what area.

Mr. Todd Smith: Okay. And the third point that you had—you had a little bit more, I believe, you wanted to get to. Go ahead. The floor is yours. You can use the time.

Mr. Rob Lapper: Well, your Chair was very effective. Thank you.

Mr. Todd Smith: Yes, he is.

Mr. Rob Lapper: All I would say is that it would appear to us that there must be some contemplation of regulation coming out of the bill. The bill contemplates that any individual may act as both a recruiter and a representative, and it is possible that some lawyers and paralegals will act as both. It's possible that both the bill's offence of acting as a representative without the authority to do so and the law society's regulatory efforts to address unauthorized practice would be targeting the same behaviour or problem. So all we're saying is, to the extent that there is going to be regulation coming out of the bill, we'd like an opportunity to sit down with the government and ensure that the regulation meshes, dovetails, is consistent, and that we don't undermine each other in the process of doing it.

Mr. Todd Smith: Right, okay. Is there anything else that you'd like to add while you have the time?

Mr. Rob Lapper: I think we're good.

Mr. Todd Smith: We're all good? Okay. I'm good too, Chair. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Smith. I should just mention that it's not often that a doctor gets the opportunity to formally interrupt legal counsels, so I savour that moment. But in any case—

Mr. Rob Lapper: Well, I can't think of a better person to do it, so thank you.

The Chair (Mr. Shafiq Qaadri): —on behalf of the committee, we appreciate your presentation and the written submission. I would now respectfully dismiss you and invite our next presenters to please come forward.

INFORMATION TECHNOLOGY ASSOCIATION OF CANADA

The Chair (Mr. Shafiq Qaadri): They are Lynda Leonard, who is senior vice-president of the Information Technology Association of Canada. Welcome, Ms. Leonard. As you've seen the protocol, you have five minutes for an opening address to be followed by questions by Ms. Armstrong of the NDP. Time begins now, please.

0910

Ms. Lynda Leonard: Well, good morning, Mr. Qaadri. My thanks to you and to the members of the committee for the opportunity to represent ITAC, which is the Information Technology Association of Canada, and to share our views on Bill 49.

ITAC is the voice of the information technology industry in Canada. We represent one of the fastest-growing sectors in the economy. We're an important enabler of competitiveness and productivity across the whole economy, but in Ontario, in particular, our direct economic impact is particularly important. We are the third-largest industrial sector in the province, contributing nearly 6% of GDP and directly employing about a quarter of a million Ontarians.

A couple of other metrics about our industry will help the committee understand why we view immigration policy as critical to our success. ICT's unemployment rate currently hovers between 2% and 3%, which economists consider to be full employment. Our workforce is well-paid, with an average wage 52% higher than the Canadian average. Our employers are also well-educated and highly skilled. Some 44% of them have a university degree, compared with a national average of 25%.

Domestic supply of ICT workers is not robust. Like the rest of the economy, our workforce is aging and approaching retirement. It's clear that we cannot fully replace retirees with new graduates in the coming years. We've witnessed troubling declines in computer science and other disciplines that feed our industry.

The Information and Communications Technology Council, which tracks the health of our labour market, forecasts that cumulative hiring requirements between now and 2019 will reach about 182,000 positions.

In order to address the gaps in our labour market, ICT employers have relied heavily upon programs for permanent and temporary foreign workers. We've followed the reforms introduced by Employment and Social Development Canada and Citizenship and Immigration Canada with keen interest and are also pleased to share our views with you on this bill today.

Generally speaking, we share with you the underlying belief that frames this bill. Immigrants play an important role in the economic growth of our province, and they have made a huge contribution to the technology industry. Simply put, we believe that ready access to the global information and communications technology workforce is vital to our ambition to continue to build a robustly competitive ICT industry in Canada.

As a global knowledge-based industry, technology also depends upon its ability to draw from the best talent from around the world for assignments of shorter-term duration that may not be permanent. Getting the policy framework right for the free flow of global ICT workers who may or may not be seeking permanent residence is important to us. We are doing our utmost, in collaboration with all levels of government, to adapt to changes in program rules and to seize the opportunities of new programs like Express Entry.

At this point, I should also underscore how important the government's strong stewardship of the provincial nominee program is to our industry. We're avid users of PNP and are pleased to see the increased allocation of spaces for Ontario, though we are conscious that we compete with other sectors for access to this rich pool.

We believe it's important for legislators to understand the cumulative compliance burdens that we bear as we reform old programs and introduce new ones. Employers seeking to access foreign workers must, first of all, have a profound understanding of all the rules governing TFW and IMP introduced since last June. They must also be able to discern which programs are best suited to a particular engagement. For example, the ICT services segment of our industry, which is, incidentally, the fastest-growing component of our industry, is a classic outsourcing business model. The requirement imposed by the new TFW rules requiring client attestation that the use of foreign workers will not result in negative impacts on the Canadian labour market is problematic in that model.

Companies that are in a position to do so are inclined to use LMIA-exempt models, such as IMP and PNP, to fulfill their mandates. Even with these programs, there is considerable discretion and ambiguity in the new rules and processes—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Lynda Leonard: So while we do support the overall intent of Bill 49, we must record our key concerns.

First of all, we're concerned—we're wondering why the need for a registry in the first place. We're opposed to some of the provisions of the bill that provide for the inspection of workplace premises without warrant. We feel the financial penalties for employers in breach of compliance are unreasonably onerous. And our members are concerned about lack of due process for the banning applications.

Finally, the provision for offence—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Leonard. To Ms. Armstrong of the NDP: five minutes.

Ms. Teresa J. Armstrong: Thank you, Ms. Leonard, for coming in this morning to present on Bill 49.

Ms. Lynda Leonard: My pleasure.

Ms. Teresa J. Armstrong: I realize the time that we have for presenters is somewhat limited, so if you would like to take some time to expand on those notes, I'd be happy to allow that.

Ms. Lynda Leonard: I would like it. Thank you for the opportunity to expand on some of our concerns.

Ms. Teresa J. Armstrong: I do have one question, if you don't mind keeping that in back of your mind, if you can get to that later: What does the association see as the needs for high-tech industry in terms of foreign recruitment over the next five years—so a good projection. And how many Canadian IT-ready recruiters will there be in that time?

Ms. Lynda Leonard: Unfortunately, I cannot speak for the recruiting segment of our industry. What I'm trying to represent are the views of the employers within our industry who may recruit directly themselves, and frequently do through their international mobility program, so I'm a little bit adrift on that.

Just to come back to that ICTC figure of about 180,000 vacancies, obviously we're not going to fill all

of those with foreign workers, but foreign workers contribute a very large part of capacity for the reasons I explained earlier: We're an aging workforce; we're seeing declines in enrolment; and the domestic source of supply is not robust. Retraining is a capability, but because of the high skill levels in the industry, it becomes very challenging to retrain for a PhD software scientist. Our challenges are about the low unemployment rate and the high skill demand within the industry.

The best strategy faced with that kind of constraint is to look at who can do that job globally. It's a global industry. We have global customers run global enterprises. Even mid-sized companies are running global enterprises, so the ability to reach into your global workforce for a short- or long-term duration is really critical to us. To do that with a system of clarity, with a system that honours natural justice and is predictable, is particularly key when we're trying to prosecute business in Ontario.

Ms. Teresa J. Armstrong: But you've also said it's the fastest-growing industry—

Ms. Lynda Leonard: It is.

Ms. Teresa J. Armstrong: So as it gets bigger and bigger—and the start-ups are huge. In London, there are many initiatives that have been taken. In terms of this legislation, do you see, obviously, a need that's going to be growing and how it can work with that need?

Ms. Lynda Leonard: The industry was certainly in hyper growth at around the turn of the century, just prior to the dot-com bubble. Our growth is somewhat curtailed since then, but the anticipation is that those growth rates will return.

In that period of rapid growth we benefited from, basically, a fast-tracked immigration process that required none of the kinds of regulations that we're seeing in this legislation and in regulations relative to federal programs. That was specific to the ICT sector. We lived through that without any significant disruption in the wage rate or in the unemployment rate. So our questions are fundamentally: Why can't we go back to that? Why this continuing need to impose process on employers?

Ms. Teresa J. Armstrong: Okay. Would you mind addressing your five points just so we can get on—

Ms. Lynda Leonard: Once again, perhaps with a breath drawn between.

Ms. Teresa J. Armstrong: Perfect.

Ms. Lynda Leonard: We question why there is a need for a registry. Participating in all existing programs for the recruitment of foreign workers requires full disclosure of pertinent information from the employer, so we're questioning why we need the registry as an additional burden of compliance loaded on.

We're opposed to some of the provisions of the bill that provide for warrantless entry. We've made comments about our perplexity about the need for warrantless entry in this and other forums.

We feel that the financial penalties under consideration for employers in breach are hugely onerous, and there's no cap. We've done the math, and that could be an enterprise-ender for a small business out of compliance, whether wilfully or accidentally. I should stress that the rules governing immigration programs are ambiguous, complex and subject to discretion, so it's really easy to fall out of compliance even with the best of intent.

We're also concerned, as I said, about the lack of due

process relative to banning applications.

And the provision for offence by other parties is unclear about the employer's limitation of liability. I'm not quite sure how deep into the organization that—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Armstrong, and thanks to Ms. Leonard for your deputation on behalf of the IT Association of Canada.

Ms. Lynda Leonard: Thank you, sir.

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HIGHLINE PRODUCE LTD.

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to please come forward: Ms. Friesen of Highline Produce Ltd. Welcome. I invite you to please begin now. You'll be followed by questions by the Liberal side. Go ahead.

Ms. Susan McBride Friesen: Good morning. I'm Susan McBride Friesen. I am the director of human

resources for Highline Produce.

Highline Produce—we're mushroom growers. A matter of fact, we're the largest mushroom farm in Canada and number three in North America. Every week, we grow 1.1 million pounds. We pick, package and ship those mushrooms across Canada and the United States. Our industry is very manually intensive.

We employ 1,120 workers in the province of Ontario across our four farm locations. Of those 1,1,20 workers, 174 currently are temporary foreign workers. We use them primarily to supplement our labour force in harvest. We cannot attract enough harvesters to that job position. I have 445 harvesters right now; 174 are temporary foreign workers.

We have a labour crisis. It is very difficult in agriculture to attract long-term permanent employees. It's not an industry that really is attractive to a lot of Canadians. As we've heard earlier, we are an aging workforce, and this

is a very manual type of job.

We also struggle for recruitment for reasons such as our rural locations. The individuals that we attract typically have not sought post-secondary education or they are newcomers to Canada. They tend to settle in the urban centres. They're not close to rural locations. They could be more than an hour away, not have transportation—there's no infrastructure available for transit from places like Windsor to Leamington or our farm in Prince Edward county in the Wellington area. We do really struggle for staffing.

So what's happened: We are not eligible to access the Seasonal Agricultural Worker Program that's been in existence for 40-some years, which recognizes that it is difficult to get farm labour. Because we are year-round and have the technology to harvest and produce 365 days a year, we're forced to rely upon the Temporary Foreign

Worker Program.

We started using this program back in 2007-08. As a result, we had workers who were with us for seven and eight years when the changes went into effect on April 1, 2015. In 2011, the federal government instituted that you could not stay longer than a four-year cumulative period. Unfortunately, our workers, although we deem them to be highly skilled—mushroom harvesting is not an easy job, and it's not for everyone. They have to properly harvest, not bruise—it's very, very delicate tissue. You want to not bruise it. They have to do it at a fairly quick pace, and they have to know how to harvest to maximize future pounds, or the pounds die; they're lost.

What happened was, we ended up losing, in our Wellington farm—on April 1, 2015, we lost 25% of our harvesters in one day. We have been actively trying to recruit replacements locally, as well as putting in new labour market impact assessments, which take six, seven or eight months now to get. The one that we put in September, for example—34 people to replace the 33 exiting—30% of those did not get visas, so we don't even find out until six months later that we're not going to get the full amount.

The answer for us is not the Temporary Foreign Worker Program. We've been talking to the federal government. We want a stream that will allow us to hire these individuals, and that's why we're here today. We'd like to see Ontario open up the PNP to temporary foreign workers in this job classification. Currently, our immigration policies exclude anyone in a national occupation code C or D, considered low-skilled. We do allow professionals and skilled individuals. We believe it should be open to these individuals as well. This is an area that is chronically understaffed. We have a permanent labour problem.

We are poised to grow. Mushrooms are a growing commodity. They're highly nutritious. In the US, we're seeing this blendability, where we're taking mushrooms, blending them with meat products and putting them in school cafeterias for higher nutrition content. We could be supplying more of that, but we can't. We cannot grow the business. I can't get any more people to operate. So that's what we're here to talk about today.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Susan McBride Friesen: We need a permanent solution. We'd like to see the PNP open—for this class to be able to apply for permanent residency, as they currently are not.

I think those are my main points, and I've given you

all a summary.

The Chair (Mr. Shafiq Qaadri): Thank you very much. To Ms. Martins of the government side: five minutes.

Mrs. Cristina Martins: Thank you, Ms. Friesen, for coming in today and raising your concerns with us here. I have a certain respect for your industry, the mushroom industry, since my mother-in-law, who lives in Chatham, worked in that industry for many years. So I'm very familiar with the wonderful products that come out of your industry. I'm glad that you're able to raise the concerns here with us today. We will definitely be bringing that back and seeing how they can be adapted.

You mentioned that you have been in discussions with the federal government. You know that the Temporary Foreign Worker Program is strictly a federal jurisdiction at this point, with no light of it changing, from my understanding. How have those discussions been going? What type of response are you getting from the federal government? I know what response we're getting.

Ms. Susan McBride Friesen: A very, very slow response. We've been in these discussions for well over a year. Obviously, we knew that this was coming. However, they seem to be listening to the industry as to our long-term needs and they said that they're going to work

We know that they recently granted an extension in Alberta to the workers whose permits were expiring, but Alberta's PNP allows for NOC C and D to apply and so that's how Alberta, the agriculture industry, got an extension there.

So we know that they're working. Actually, we were told to start looking to the province, to the PNP program, to see if that's a way that we can access permanent. We know it sits with them, though, ultimately.

Mrs. Cristina Martins: Right. And with regard to the Seasonal Agricultural Worker Program, is that one of the

programs that you also seek to bring people in?

Ms. Susan McBride Friesen: No, we can't because we're year-round. You see, that's a program where you can bring workers in year after year after year for the harvest, but they're seasonal and they go home, but the same skilled workers come back every year. What's happening to us is, we're sending home all these workers who are highly skilled, trying to bring in new workers who can't do the job for probably six months to a year. It's a very, very specific skill set. It's not an easy job. So we have no access to the seasonal because of that and it wouldn't work for us. It's eight months and we're 12 months a year.

Mrs. Cristina Martins: And in terms of trying to attract and retain workers from across Ontario, programs you have in place, your attempts to do that-very

difficult, you said earlier?

Ms. Susan McBride Friesen: It is extremely difficult. We're on it all the time. We work with all our local refugees and settlement agencies and people bringing in newcomers to Canada. We work with the local schools and the college. We have offered busing from-in our Wellington farm location we have a bus that brings our temporary foreign workers in. So we've offered it to any local workers. We give supplemental travel pay to every worker. They get an extra, I think, \$6.50 a day just for travel expense, or they're on our bus or in a cab.

So we're doing what we can. We have a benefit package. We have a pension plan-you know, we have a lot to offer. It's not enough. We don't have enough people. I put in my paper—the labour conference of Canada says that we're going to have a labour shortage of 364,000 people by 2025. They said that in 2007. It's

2015, and it's here; we have a labour shortage.

Again, mushroom growing is not a really sexy occupation. People are not attracted to go and work in farming. Despite everything we do, we're going to have a permanent problem here. I'd like to grow this area—

Mrs. Cristina Martins: No pun intended. Right?

Ms. Susan McBride Friesen: Actually, it is intended—and be a bigger player and be able to have more exports. We could do it, but we can't right now.

Mrs. Cristina Martins: And currently, you export

how much of your product, you said?

Ms. Susan McBride Friesen: Some 30% of our product is exported to the mid-US. Our main competitor would be the Pennsylvania area and then California in the US, but our quality is far better. I might be bragging, but, yes, our quality is far better, and we grow without pesticides or herbicides. So it's a very safe, nutritional product, and it's something that I think is good for Ontario to be locally grown.

Mrs. Cristina Martins: I don't have any further questions. I just wanted to once again thank you for coming in. If you want to take whatever time we have—

Mr. Chair, I'm not sure how much time—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mrs. Cristina Martins: —to state anything else you'd like to state.

Ms. Susan McBride Friesen: I think I've said I would like to see us follow what Alberta has done. I believe Saskatchewan and Manitoba are currently looking, similarly, in support of the agricultural industry and year-round agriculture. I know that that's one of the government initiatives, to grow our agri-food industry. It is a growing area, but we need this support.

I thank you for listening to me today.

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The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Martins, and thank you, Ms. Friesen, for your deputation on behalf of Highline Produce Ltd.

TORONTO REGION IMMIGRANT EMPLOYMENT COUNCIL

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters, Toronto Region Immigrant Employment Council: Ms. Eaton, the executive director. Welcome. Please begin.

Ms. Margaret Eaton: Thank you. I'm Margaret Eaton. I'm the executive director of the Toronto Region Immigrant Employment Council. Thank you very much

for the opportunity to speak today.

The Toronto Region Immigrant Employment Council creates and champions solutions to better integrate skilled immigrants into the greater Toronto region labour market. We help employers make the most of the greater Toronto region's culturally diverse workforce and we help immigrants connect to employment that fully leverages their skills and experience. We fundamentally believe that when immigrants prosper, we all do. That is why we welcome the Ontario Immigration Act as the first of its kind in Canada.

There are three parts of the bill that I would like to comment on today. First, we welcome the suggestion of an employer registry, which will protect newcomers from fraudulent job offers. However, we are keen to make sure that any new system is not so onerous that it discourages employers from participating in the application process. Large employers may well be able to meet the demands, but small and mid-sized employers, the largest group of employers in Ontario, continue to tell us that they struggle with capacity issues. An effective process for registration that protects the vulnerable is paramount, but a transparent process for employers is necessary to ensure that those with legitimate job offers are well served.

Secondly, we applaud the Ontario Immigration Act's recognition of the important role played by the not-for-profit sector in settlement and employment of new immigrants. In Ontario, our settlement agencies have been on the front lines of welcoming and supporting newcomers for decades. Access to services by newcomers is extraordinarily important in ensuring the short- and long-term success of new immigrants. We're encouraged that this bill recognizes that important work.

Thirdly, the bill refers to collaboration with municipalities and employers as being essential to address Ontario's short- and long-term labour market needs. The ministry has already taken steps to include employers in the conversation through the minister's employers round table. We certainly applaud that step. Those short-term labour market needs can be pressing. We believe that permanent migration needs to be prioritized if we are to meet long-term labour market needs.

Canada's fertility rate is too low. We are not replacing ourselves. Even with our current rate of immigration, we will not be able to compensate for declines in population. A system that focuses on temporary workers does not address the long-term need we will have to maintain and grow our population in order to maintain our current standard of living. Permanent migration should be our goal to ensure the prosperity of all Ontario citizens.

It is extremely encouraging to see the provincial government taking a leadership role in creating this act. At a time when the status and contribution of immigrants is being questioned, this legislation is even more important. The discourse around immigrants has changed, and we need to take our formal opportunities to state, as the bill does, the importance of immigrants to Ontario.

Immigrants still struggle. The unemployment rate for skilled immigrants is twice as high in Ontario as for similarly skilled Ontario-born citizens. Employers continue to discount education and experience earned abroad. Therefore, we welcome the Ontario Immigration Act as a tangible sign of Ontario's commitment to helping employers and immigrants succeed.

Ontario is and continues to be the leader in Canada in immigration. Ontario created the first Fairness Commissioner role, and our programs and practices for integrating immigrants are internationally renowned. With the legislation, we continue this important role, setting a high

standard for other jurisdictions about what it really means to be a truly welcoming and inclusive province.

Thank you.

The Chair (Mr. Shafiq Qaadri): Thanks very much, Ms. Eaton. To the PC side: Mr. MacLaren, five minutes.

Mr. Jack MacLaren: Could you just sum it up and tell us what are your main concerns with this bill? What problems are there, I guess, really? What changes would you like to see made?

Ms. Margaret Eaton: I think the bill, as presented, is fine. I'm more concerned about the implementation, and how the implementation rolls out, particularly around the employer registry. As we heard from the IT sector, the concern is that with the federal system of Express Entry, employers are now going to be very responsible for bringing in our citizens to this country. Even that process is onerous, with having to create the LMIA to sign up to the job bank. Having an additional registry on top of that in Ontario, while I think it is a beneficial idea because we do want to stop fraudulent offers and protect migrant workers, at the same time we have to make sure that the process is transparent, that it's clear, that there isn't a financial cost that prevents people from participating, and that there is some sort of appeal process. These things are referred to in the bill, but we want to keep those things

Mr. Jack MacLaren: Basically, you're identifying more or less the same things that were identified by the Information Technology Association?

Ms. Margaret Eaton: Similar, yes.

Mr. Jack MacLaren: Too much red tape.

Ms. Margaret Eaton: Pardon me?

Mr. Jack MacLaren: Too much red tape.

Ms. Margaret Eaton: It may be, yes. We know it's tough for business. They often don't wish to participate in government programs because it can be so onerous. We want them to be an active part of the labour market of immigrants.

Mr. Jack MacLaren: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. MacLaren, and thanks to you, Ms. Eaton, for your deputation.

ONTARIO BAR ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward: Mr. Moses, Ms. Seligman and Mr. Kuzminski of the Ontario Bar Association. Welcome, colleagues.

Ms. Robin Seligman: Thank you.

The Chair (Mr. Shafiq Qaadri): Please be seated. I invite you to please begin now. It will be followed by five minutes of questions from Ms. Armstrong of the NDP. Please begin.

Mr. Jason Kuzminski: Thank you. My name is Jason Kuzminski. I'm a lawyer and volunteer with the Ontario Bar Association. I'm joined by Marvin Moses, chair of the OBA's citizenship and immigration section, and Robin Seligman, executive member of the section.

The OBA represents 17,000 lawyers, judges, law professors and students who believe in our role in assisting you in making laws that are effective and efficient. Our objective for being here today is to support the immigration regime and tools you and the government wish to create. But we also wish for you to address some elements of this bill that create uncertainty and that risk making the regime and tools less effective and less efficient.

We have a written submission that focuses on four concerns, but in the interests of time, Marvin and Robin

will speak to two of them.

Mr. Marvin Moses: Thank you. Basically, what are we here for? We're looking at: What does the government want to accomplish? What do we seek? We want to find the vulnerabilities in the proposed system. We all seek the same: an efficient, effective, transparent and working regime.

As is, the government's reliance on certain sections will lead to court challenges and a fight over what is legal, which will end up in certain sections being struck down. We want to avoid these inefficiencies and a less

efficient system.

When looking at absolute liability for AMPs, administrative monetary penalties—that's found in section 26 of the Ontario Immigration Act, the proposed act; it's page 3 of our OBA submission—what is the objective of the government? To get rid of the bad players. We agree with the objective, but what is the result from the legislation as worded? It's going to deter the good players.

What does section 26, in effect, state? If the current regime imposes absolute liability and allows for AMPs, even if the director and/or employer and/or lawyer acted reasonably, honestly and took all possible care, they would still be liable. It must be recognized by that lawyers, employers, like some of the ones we've heard from today—directors—all rely on representations made by third parties. Even if due diligence is exercised, even if these persons acted reasonably, honestly and took all possible care, the legislation states that this is irrelevant.

As counsel and with knowledge of the sector and many years of experience in working in the sector, we can't recommend that employers and directors use the regime if changes are not made. The legislation, as worded, does not achieve what the government and we both want: to rid the system of bad players while not deterring the good players. We all seek the same: an efficient, effective, transparent and working regime.

Robin?

Ms. Robin Seligman: Thank you. I will speak to the issue of warrantless searches of law offices. We commend the province of Ontario for expanding their role in selecting immigrants for Ontario, but it's important to do it right. The warrantless inspections are in breach of solicitor-client privilege, a well-recognized, fundamental civil and legal right in Canada. We support the submission of the law society in this area with respect to lawyers.

On a practical level, an inspector attends a law office and asks to look at a file. What are they looking at?

They're looking at documents, solicitor-client-privileged documents. In effect, it's a search, which is in breach of solicitor-client privilege and the Supreme Court of Canada provisions in this regard. It's not the same as inspecting a restaurant, where the inspector would go in and do a physical search of the premises.

The objectives of the act are to instill integrity of and compliance with the program. However, this provision will ensure that the program will not be recommended by good lawyers, who would not support a program that would allow warrantless inspections of their offices.

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Section 23 should be amended to exempt law offices from warrantless searches. Our recommendations appear on pages 9 and 10 of our submission and appendix 1. Searches with a warrant must be conducted in accordance with law society search provisions and guidelines and the Supreme Court of Canada criteria set out in appendix 1 of the OBA materials.

The Ontario Bar Association will be happy to assist in advising and assisting in this regard as we have extensive experience and knowledge. Thank you.

Mr. Marvin Moses: I will speak to the final issue that we're going to address today, which is unlimited discretion to refuse an application—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Marvin Moses: —the rule of law and natural justice.

Under subsection 16(4) of the act, page 13 of our submission, we address it. What does 16(4), in effect, state? Even if all the criteria are met by an applicant, the application can be refused. What should be the objective? Enhancing the international reputation of the regime encourages more users by making the regime more transparent and fair instead of the need for back-end remedies, which is what will be required under the legislation as currently worded. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Moses. To Ms. Armstrong of the NDP.

Ms. Teresa J. Armstrong: Good morning to all of you and thank you for coming out with your presentation.

I do have a concern that many presenters are feeling rushed through this whole process, so I will allow for some time for you to contribute any other concerns you have. But one of my questions that I wanted you to consider while you're presenting further was to explain the impact the proposed regulation of the act has on your actual members. What does that impact look like? Could you offer alternatives to how to regulate or oversee bad actors or bad players in the recruiting process?

Ms. Robin Seligman: I think the area that you're referring to is one that's covered by the law society and that I spoke to with respect to warrantless searches. Again, there's no intention here to protect bad players, but there is a system. If there is a problem and there's a suspicion and serious evidence, there's nothing prohibiting the government from going to get a warrant and being able to do it under the provisions that are already recognized by the Supreme Court of Canada and the law

society rules for regulating searches. They're very particular. Privileged information is sealed, and we set out all the criteria in appendix 1. There has to be an independent person there and there have to be proper procedures set in place.

It's very important to protect the integrity of the legal justice system. You want to be able to have proper solicitor-client confidentiality in all areas of the law.

Ms. Teresa J. Armstrong: So you think that particular part of the act is weak when it comes to that section, the search and seizure?

Ms. Robin Seligman: Definitely, and in terms of the practical implications, if a lawyer knows that somebody can just walk in their office one day and say, "We're here to conduct an inspection. Give us your file," we'd be put in a situation where we'd be in conflict. We'd say, "Well, we can't give you the file because it's in breach of our solicitor-client confidentiality," but under these existing provisions we'd be in breach of the provisions and we could be subjected to serious fines and penalties for not complying.

So the very act of walking in and saying, "Give us your file"—as I said, I contrasted that to, let's say, a restaurant where they may feel there's some other reason they have to go in to inspect. It's not the same. You'd walk into a restaurant and see that there's either—whatever they'd be looking for. It's not the same as taking a file and looking at the actual documents that are privileged. It's a quite different situation.

Ms. Teresa J. Armstrong: And the third point that you were trying to get to: Would you mind expanding on that a little?

Mr. Marvin Moses: Sure. Similarly, because as a lawyer—our constituency, as one of the representatives and the way the AMPs work, we could potentially be subject, along with our clientele, the employers or persons who are receiving information—and even if they and we are acting all in good faith, there's no defence of due diligence. There's no defence of, "We acted honestly and carefully and we did everything that could be expected to be done." That, as written, doesn't care. We would still be caught.

One of the recommendations is that there should be a defence of due diligence and honest, reasonable, mistaken belief in order to be able to avoid these penalties. Otherwise, we're getting in a situation—what Robin is referring to is the same—where we're looking at a backend remedy, where a fine or a penalty is being imposed and then after the fact we're fighting it out. That takes up a lot of resources. It's a new regime you're creating. While you're creating this new regime, let's get it right from the start instead of having to go back, amend things, change things and deal with things after the fact. Nobody wants to deal with all that trouble and extra resources you need when you're on limited resources—

Ms. Teresa J. Armstrong: You're presumed guilty before your hearing.

Ms. Robin Seligman: Yes, I was going to—

Mr. Marvin Moses: Potentially. And how could we recommend to the stakeholders we deal with that they use

this system, knowing that there's this potential—and a very high risk—that no matter what they do, there's a risk that they have on their head that could hit them.

Ms. Teresa J. Armstrong: Yes, regardless of their due diligence, and they were acting in a proper manner—

Ms. Robin Seligman: I was going to say, it's specifically set out that even if they act reasonably, act honestly, do everything they can, it's not a defence. It says, "Even if you do those, you're still liable." It's very rare that you would see that. You've done everything—

Ms. Teresa J. Armstrong: So you'd like to see some

changes to that, perhaps—

Ms. Robin Seligman: That would be a defence, if you've acted reasonably. What is the behaviour that they're looking to suppress? It's not good behaviour. It's not honesty.

Ms. Teresa J. Armstrong: Have you submitted an amendment to the government on that?

Ms. Robin Seligman: Yes, we have, and it appears in our materials at page 6, "Proposed Solutions."

Ms. Teresa J. Armstrong: Okay. Thank you very much. No further questions, unless you'd like to add anything else in whatever time is remaining.

Mr. Todd Smith: Chair, is there an opportunity—

The Chair (Mr. Shafiq Qaadri): Not here. Question period will start in about an hour.

Thank you, Ms. Armstrong, and thanks to colleagues from the Ontario Bar Association. I respectfully dismiss you.

MIGRANT WORKERS ALLIANCE FOR CHANGE

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenters to come forward, please: Mr. Hussan, of the Migrant Workers Alliance for Change.

Welcome, Mr. Hussan. You have five minutes in which to make your remarks, followed by questions from

the government side. Please begin.

Mr. Syed Hussan: Good morning. My name is Hussan, and I'm the coordinator of the Migrant Workers Alliance for Change. We're a national coalition of migrant worker groups, unions, faith-based organizations and legal clinics. We're the largest such coalition in the country, as well as here in Ontario. We work primarily and only with people on work authorizations and work permits.

As you have heard today, there are quite a number of people in the Temporary Foreign Worker Program in this province—about 100,000 within the Temporary Foreign Worker Program and the international labour mobility program. There are 84,000 international students in this province, many of whom are on work permits. There are refugee claimants on work permits, and there are approximately 200,000 undocumented people in this province, who have no immigration status.

Many migrant workers—this is what we believe—work in dangerous conditions. People are working where, because of the work authorization, they have no choice

but to follow the instructions of bad employers, if that's where they end up. Many Ontario services, including health care, social assistance, education and full labour protections, are actually off-limits to these people. So when we're here today to hear about the Ontario Immigration Act, we are frankly a little bit surprised by how little there is in this law about migrant workers.

In our conversations with the Ministry of Citizenship, Immigration and International Trade, we've been told over and over that this bill is only about the provincial nominee program, which, at its height, is 2,500 people. We want to try and figure out a way for Ontario to step up and actually work on behalf of migrant workers, who are the majority of migrants who are in this province. These are the people who are the most vulnerable to work conditions.

Now, often we hear that it's the federal government's responsibility to deal with these issues, and I want to be very clear: Multiple jurisdictions—Manitoba, Nova Scotia and Alberta—have made changes to labour, social assistance, education, health and other provincial legislation and regulation, to ensure better protections. We think Ontario needs to take that step, and it needs to take it now.

One of the things, of course, as has been said before, is that the provincial nominee program actually excludes these low-waged workers, right? It is one of the few provinces where that happens, and we need to start thinking about how we can change that. That is obviously not a full solution, because of how small the program is, but Ontario needs to play it smart, to give access to citizenship to people who have worked here for many, many years.

Obviously, overall changes are needed. This is one bill. It says it's an Ontario immigration act; we believe an Ontario immigration act would include migrant workers. But one of the things we need to talk about is, we need to see legislation around the recruitment process. The reason I bring it up is because the Ontario Immigration Act has a recruitment system in it. Now, understand that because it only applies to the provincial nominee program and the 2,500 people in it, most of those people are actually already in Canada. They're not being internationally recruited. So it's a little bit uncertain why this piece is in here, but even so, the way it's written, it's all about changes that will come in regulations. We don't actually know how that system works.

0950

What we do know is what an actually effective recruitment regulation regime looks like that ensures real protections for migrant workers, because it's been tested in these jurisdictions that I laid out: Manitoba, Nova Scotia and, in some ways, Alberta.

Specifically, this is what needs to happen: Ontario today does not know who recruits migrant workers in this province. People just don't know. That's a little bit unreasonable. We are asking for Ontario, like the rest of the country, to license recruiters, register employers and then hold them jointly financially responsible for fees paid.

Today, migrant workers coming into this province pay \$10,000 to \$20,000 to get a job to work here. When you've paid that much money to start a job, you are not going to speak out about abuses against you because it will mean you'll get fired, and once you're fired you may end up leaving the country, and you can't go home with that much debt. The recruitment process, in and of itself, makes it very hard for people to leave. It has an overall depressing impact—

The Chair (Mr. Shafiq Qaadri): Thirty seconds. Mr. Syed Hussan: —on economic conditions.

Recruitment process: We have an entire regime that we are proposing in our submissions, but specifically, registration of recruiters, licensing of employers, and making them jointly and financially responsible. This is a system that is already working in other parts of the country. Ontario can act; it can do so now. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hussan. Maintenant je passe la parole à M^{me} Martins du gouvernement : cinq minutes.

Mrs. Cristina Martins: Est-ce qu'on va parler? Oui? Merci.

Thank you so much, Mr. Hussan, for coming in today and sharing with us, with such passion, your advocacy on behalf of the Migrant Workers Alliance for Change. You often made reference to the PNP and the 2,500 value, I guess, or allotment that Ontario has. I'm not sure if you're aware, but the federal government was a little bit generous with us and increased that to 5,200, so we now have 5,200 allotments under the provincial nominee program, from which Ontario can invite people to come to Ontario to work.

You also talked about the vulnerability of the migrant workers and the recruiters and perhaps the unscrupulous recruiters that we have. With this proposed legislation, we tried to put provisions in place that would hopefully eliminate and deter unscrupulous recruiters and people within the legal profession to ensure that these most vulnerable newcomers and people of Ontario are not taken for granted and taken advantage of.

You also talked about the Temporary Foreign Worker Program. As you know and rightfully said, it is the federal government. I'm not sure what types of discussions and conversations you have had with the federal government with regard to temporary foreign worker programs.

Mr. Syed Hussan: Just on the second part, that this bill will actually ensure regulation of unscrupulous recruiters: It's very unclear what this legislation will actually do. Most of it gives the government powers to do something; it does not actually legislate much.

What we do know is that it is not clear that this will apply to all recruiters in the province. What we do know is that it does not hold them jointly financially responsible. So what is the actual licensing mechanism of these recruiters? There are just not a lot of details.

I also think that it's sitting in the wrong ministry. Recruitment is a labour practice. In other provinces across the country it's labour that has responsibility, so training a new set of officers within the citizenship min-

istry to go out and deal with recruitment seems counterproductive, and it's very unclear if they'll actually be able to uphold labour regulations.

As it's written, the recruitment regime doesn't make sense. We believe there should be new legislation that prioritizes protection of vulnerable workers. This legislation is aimed at facilitating recruitment of people into the provincial nominee program, which is a totally different system.

Mrs. Cristina Martins: I guess the organization that you're with, the Migrant Workers Alliance for Change—you're probably the first interface for a new immigrant coming to Ontario with the rest of society, if you will, and you provide them with various programs that can help them in terms of integration into society.

Can you tell me a little bit more about how your organization works to ensure that these newcomers have an easier transition to life in Ontario, and more specifically to your point and your concern, the concern you repeatedly addressed and brought up here today, on ensuring that these vulnerable workers do not fall into the hands of unscrupulous representatives?

Mr. Syed Hussan: Right. As we work with migrant workers, these people are denied a path to permanent residency. There isn't a system to integrate these people into our community, right? What we are doing is producing a patchwork of rubber-band and partial solutions. What we need is a path to citizenship, and this legislation does not allow for that. It does not force Ontario to take a stand and say, "We need to recruit and ensure that lowwaged workers are actually able to get citizenship."

Now, the question of the work that we're doing: Yes, we're providing services. We're dealing with the fact that there are no legal mechanisms to ensure that unscrupulous recruiters don't get away. At one point, we had some workers actually film recruiters charging them money. We have had recruiters walk workers to ATMs on the first of every month and withdraw money and take it home with them. That is happening right now, and it's more or less legal.

When those things have hit the mainstream media—these have been covered on CTV, Global News and CBC—not much happens. The police can't act; it's not a policing issue. It's actually a labour issue, and the employment standards branch simply does not have the tools to make it work.

Mrs. Cristina Martins: So the licensing of these recruiters—I guess your organization would provide guidance to those seeking any—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Martins. Thanks to you, Mr. Hussan, for your deputation on behalf of Migrant Workers Alliance for Change.

Is our next presenter here—Mr. Stevens of Mushrooms Canada?

Interjection.

The Chair (Mr. Shafiq Qaadri): Colleagues, we are in recess until exactly 10:05, which will give us the 10 minutes before break for question period.

We're still awaiting Mr. Stevens. He has been sighted, so I presume he's en route.

So, until 10:05, approximately. *The committee recessed from 0957 to 1005.*

MUSHROOMS CANADA

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I welcome now Mr. Stevens, chief executive officer of Mushrooms Canada. Mr. Stevens, you will see you have five minutes to make your address, and then you will be asked questions by the PC caucus for a further five minutes. Please begin now.

Mr. William Stevens: Thank you, Mr. Chairman. I will read my address. I think there are some handouts. I think I'm the second delegate from the fungi crowd, so bear with me.

According to the George Morris Centre—which is a think tank in Guelph, Ontario—report on the economic impact of temporary foreign workers on the Canadian mushroom industry in October 2013, the mushroom sector of Ontario agri-business contributes approximately \$500 million to the economy. Furthermore, 50% of all the mushrooms grown in Ontario leave the province. Approximately half go to eastern Canada and the other half to the United States.

Our members in Ontario employ approximately 2,000 Canadians and 500 temporary foreign workers from Asia, eastern Europe and Latin America. Most of the temporary workers are employed as mushroom harvesters. All workers are guaranteed provincial minimum wage. In addition, mushroom harvesters are paid a bonus based on productivity, which increases their earnings to between \$15 and \$20 per hour.

It has been demonstrated repeatedly that temporary foreign workers in primary agriculture are not displacing Canadian workers. Mushroom growers are excluded from the Seasonal Agricultural Worker Program because mushrooms are harvested year-round. Consequently, mushroom growers are dependent on the temporary foreign worker low-skill, low-wage program to augment their Canadian workforces.

For the past four years, mushroom growers across Canada have been preparing for the loss of their most productive harvesters on April 1, 2015. That is the date when the low-skill/wage temporary foreign workers who have accumulated four years of employment in Canada must return to their home countries, to be replaced by new, untrained temporary foreign workers, if their LMIA applications are approved. The impact of this four-in/four-out regulation is not only a significant drop in production of fresh mushrooms but also the potential loss of employment to Canadians. If the mushrooms are not harvested—my favourite phrase: If you don't harvest them, you can't pack them and sell them. The people who pack them and sell them are Canadians. We are in the middle of that crisis at this time.

One of the programs that could alleviate this critical situation is the provincial nominee program in Ontario.

Specifically, we propose that the Ontario Minister of Citizenship, Immigration and International Trade apply to the federal Minister of Citizenship and Immigration to amend the Ontario provincial nominee program to include semi-skilled workers in agriculture. Similar amendments have been implemented in Alberta, Saskatchewan, and possibly British Columbia, New Brunswick and PEI. I can't get it straight from those provinces.

We note that the PNP allows an avenue for skilled workers to apply for permanent residency but excludes semi-skilled workers. The inclusion of semi-skilled workers in the PNP would have a profound impact on the Ontario agri-food sector by stabilizing a labour force of experienced workers, reduce the need for low-skilled temporary foreign workers, increase the employment of Canadians, and contribute to the prosperity of Canadian agriculture and horticulture. It would be a positive step towards fulfilling the Premier's challenge to the Ontario agri-food industry to create 120,000 new jobs, I believe, by 2020.

Thank you for the opportunity to submit that.

The Chair (Mr. Shafiq Qaadri): Thank you very much, Mr. Stevens. To the PC side, five minutes: Mr. Smith.

Mr. Todd Smith: Thank you very much, and thank you to Mr. Stevens as well. Of course, we had Susan McBride here earlier from—

Mr. William Stevens: Yes, it was supposed to be a tag-team match but I couldn't find parking.

Mr. Todd Smith: We split you up. There's more power—strength in numbers; right?

Thanks for coming. You've outlined some of the same concerns that Susan outlined from Highline. Highline is the biggest employer in Prince Edward county, where I come from. I know it's a big employer right across the province in various communities.

What will this mean to companies in Ontario if we can't get this right? Will these producers end up moving to other jurisdictions if we can't sort this out in Ontario?

Mr. William Stevens: Two or three answers to that, sir: The impact right now is a reduction of 10% of the Ontario industry. If that's valued at \$500 million, we're talking a reduction of \$50 million in products sold.

We also know that there are production lines across the province—possibly Ms. McBride mentioned it—that are sitting idle.

I also try to answer that question by saying that, as a consuming public, we really have a choice to make. We can have our fresh produce produced in Ontario and harvested by temporary foreign workers, or we can have our fresh produce produced elsewhere and harvested by those same workers. It's a matter of local, the green concept of minimum transportation. All of those factors are coming to bear.

Specifically, in answer to your question, I would not be surprised to see some of these jobs leave the province.

Mr. Todd Smith: Right, and, as I mentioned, it's a huge employer in my area, in Prince Edward county, and we would obviously hate to see that happen.

I hope the government isn't set on just blaming the federal government for this, and I hope that we can work out some kind of a solution here at the Ontario level, like they have done in other provinces. Can you tell me what has happened in those other provinces to make this work, and has it been a long process?

Mr. William Stevens: The one that got the most publicity, obviously, is Alberta. Alberta is suffering hugely not only in primary agriculture, but in the processing sector.

Their provincial nomination program—I would suggest an arrangement was made between Minister Kenney and Mr. Prentice that those low-skilled temporary foreign workers who had applied for residency prior to July 1 last year—because of the backlog in the applications in that province, they have been afforded a year's extension on their work permits in order to have their cases heard. That gets most of the publicity, and sometimes that's interpreted as a Canada-wide policy. It is not a Canada-wide policy.

Mr. Todd Smith: Right.

Mr. William Stevens: The other piece is that we have been active in dealing with the federal government. In fact, I looked it up the other day: Our first letter on this went in 2010, so I personally have been active for at least five years on this file.

We have been in the Prime Minister's office a couple of times. We have met with the minister who is responsible for—the new minister, Pierre Poilievre. We have met with CIC. We have met with the Ministry of Agriculture. We've met with the opposition parties and their critics.

So we're still active, even though April 1 has passed us by.

Mr. Todd Smith: Right. But the lines here—many of them are idle in Ontario, because those workers have left. I know they're referred to as low-skilled workers, but this is a pretty unique skill set that these employees—

Mr. William Stevens: It takes about six months to train somebody to be productive, because the market-place dictates this—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Smith. Thanks to you, Mr. Stevens, for your deputation on behalf of Mushrooms Canada.

Colleagues, the committee is in recess until 2 p.m. today. Thank you.

The committee recessed from 1014 to 1400.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We'll resume our committee hearings. Justice policy: Bill 49, An Act with respect to immigration to Ontario and a related amendment to the Regulated Health Professions Act, 1991.

ONTARIO CHAMBER OF COMMERCE

The Chair (Mr. Shafiq Qaadri): I'll invite our first presenters to please come forward. From the Ontario Chamber of Commerce: Ms. Alexandra Schwenger and Mr. Liam McGuinty. Mr. McGuinty, I believe I've met

both your mother and father on various occasions. In any case, welcome home. I invite you to please begin now—five minutes.

Mrs. Cristina Martins: Mr. Chair, just on a point of order.

The Chair (Mr. Shafiq Qaadri): Yes, Ms. Martins?

Mrs. Cristina Martins: Just on a point of order, Mr. Chair: It is my understanding that we have all-party consent that our committee meeting next week will be adjourned after 10:15.

The Chair (Mr. Shafiq Qaadri): Let's deal with that

after the witnesses.

Mrs. Cristina Martins: Okay.

The Chair (Mr. Shafiq Qaadri): Thank you.

You may resume. The time is at zero.

Mr. Liam McGuinty: Thanks very much, Chair. As you mentioned, my name is Liam McGuinty. I'm the interim vice-president of policy and government relations at the Ontario Chamber of Commerce. I'm here with Alexandra Schwenger, who is a policy analyst at the OCC. Thank you for having us.

We'll be brief in our remarks, and we do want to leave time for some questions. Alex will take you through a bit of our sentiments on the bill. I think we are largely supportive, and in fact, there's not much that we take issue with in this bill.

We've had a long and constructive relationship with the Ministry of Citizenship, Immigration and International Trade. I'm very happy to see Cristina Martins here, who we've worked with. We've also worked with all parties on this file, and we look forward to continuing to do so.

With that, I'll pass it on to Alex.

Ms. Alexandra Schwenger: We're very pleased to be here today to speak on Bill 49, the Ontario Immigration Act. The Ontario Chamber of Commerce believes that immigration is vital to Ontario's future economic prosperity. Demographic trends suggest that over the next 25 years, immigration will account for all of the increases in Ontario's working-age population and is therefore expected to be a main source of future labour market growth. As well, labour market projections indicate 70% of new job openings will require skilled workers.

Some forecasts project over two million job openings between 2012 and 2022, which cannot be met by domestic supply alone. Therefore, it will be critical to attract and retain highly skilled immigrants to meet Ontario's labour market needs and contribute to Ontario's future prosperity. That's why, for the past two years, we have been eager participants in the minister's employers' tables. In collaboration with the Ministry of Citizenship, Immigration and International Trade, we have hosted the minister's employers' tables with employers from across the province.

In 2013, we consulted with employers on the design parameters of Express Entry, the federal government's new application management system for economic immigration. In 2014, we asked employers to identify emerging labour market needs, and gathered and verified

regional labour market evidence. Ontario employers understand better than anyone else that immigration plays an important role in filling labour market gaps and ensuring continued growth for Ontario's labour force. We heard from many employers who are having difficulty meeting their labour market needs. Immigration will help employers more easily access the skilled talent they need to grow their businesses.

The Ontario Chamber of Commerce is supportive of any initiative that gives Ontario greater control over its economic future, and immigration will play a tremendous

role in that future.

We are also in favour of weeding out fraud from the system. We're pleased to see strong checks in place in this bill, including fines. Fraud in the system hurts all businesses. The bill will also increase information-sharing with immigration partners by allowing Ontario to communicate with other provinces to share information about fraudulent practices.

The Chair (Mr. Shafiq Qaadri): Thank you. If you're ceding your time, I'll offer the floor to questions, then. Okay, we will start with the NDP. Mr. Natyshak:

five minutes.

Mr. Taras Natyshak: Thank you, Mr. McGuinty and Ms. Schwenger, for your deputation. I'd like to give you a little bit more opportunity to elaborate on what exactly the economic impact is on members of the Ontario Chamber of Commerce as it relates to new immigrants coming who don't have their foreign credentials recognized. I'm certain that you've done elaborate studies on that. It seems as though the issue continues and is pervasive. But I'd like to give you an opportunity to elaborate on that.

Mr. Liam McGuinty: Sure. If I might, that's a great question. The issue of foreign credential recognition: The Ontario Chamber of Commerce represents 60,000 businesses, all sectors, all regions of the economy. We also represent sector bodies, regulatory bodies—often those bodies that regulate professions. So if you take a look—and I think of the accountant bodies in particular—there has been some good work done toward recognizing foreign credentials, but there is a lot more work to do. It's not hard to go out and find stories of someone who is professionally certified in another country who is not able to have their credentials recognized here. So it's a topical question, and we hope to be looking at that subject in a bit of greater detail over the next year.

I would say—and I think it frames the picture a little clearer—that 33% of our members say that they can't fill a job right now because they can't find someone with the right qualifications. So one third of Ontario businesses—and we do the biggest survey of business opinion in the province; in the country, as far as I know—say they can't fill a job because of the "skills gap," and we do believe there is a skills gap. Yet, at the same time, we have these very high pockets of unemployment among new Canadians. In fact, new Canadians with a university education have a 14.4% unemployment rate, compared to 3.3% of Canadians with a university degree. So something is clearly amiss there, right?

When you consider that fact, and you consider this paradox of high unemployment but big pockets of people who can't find jobs, something has to give. Foreign credentials is a piece of that. I don't want to overstate the problem, but it certainly is a piece of that in those professionally regulated professions. We see ourselves as having a virtuous role in helping overcome some of those barriers.

Mr. Taras Natyshak: What do you think about the collective impact of restricting thousands of low-wage temporary foreign workers through the recent changes to the program federally? What, specifically, is the impact there, through the lens of the Ontario Chamber?

Mr. Liam McGuinty: Here's what I would say about the TFW program and others: There were abuses in the system, clearly. You could read many, many media reports that support that. So the Labour Market Opinion switched to a Labour Market Impact Assessment as a result of some of those problems in the system, and there were real problems.

Here's what I want to say: The LMIA is a new process for employers. It's fairly onerous. It doesn't necessarily recognize established and recognized skills shortages in a particular sector or region. It doesn't necessarily recognize good employer behaviour. So if an employer has used the LMIA or TFW before, it doesn't necessarily reward that behaviour.

What businesses are looking for comes back to the same principle, whether we're talking about Express Entry, whether we're talking about TFWs or any other program—PNPs etc. They want quick access to labour. The TFW in particular, as opposed to Express Entry, is much more focused on what I'll call lower-skilled labour. A lot of our businesses, especially in the agricultural sector and comparable sectors, really need that quick access to labour and have difficulty finding those types of employees in Ontario. The TFW system was not perfect, and continues to remain imperfect. But I think the principled approach we take is that we need to ensure that employers have rapid access to the talent they need.

Mr. Taras Natyshak: Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak, and thanks to you, Mr. McGuinty and Ms. Schwenger, for your deputation on behalf of the Ontario Chamber of Commerce.

METRO TORONTO CHINESE AND SOUTHEAST ASIAN LEGAL CLINIC

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenters to please come forward: the Metro Toronto Chinese and Southeast Asian Legal Clinic. Natasha Tso and Ms. Wang, articling student, please come forward. Have a seat and please introduce yourselves. Your time begins now.

Ms. Natasha Tso: Good afternoon. My name is Natasha Tso. I am a staff lawyer at the Metro Toronto Chinese and Southeast Asian Legal Clinic—MCSA, for short. I'm here with my colleague Ms. Ruoxi Wang, an articling student at our clinic.

Mr. Chair and members of the committee, MCSA is pleased to appear before you this afternoon to discuss Bill 49. MCSA is a community-based legal clinic funded by Legal Aid Ontario, which provides free legal services to the low-income Chinese, Vietnamese, Cambodian and Laotian communities in Toronto.

MCSA has represented workers who have filed complaints with the Ministry of Labour concerning Employment Standards Act violations such as unpaid wages, unpaid termination and vacation pay, and excessive working hours; discrimination and human rights complaints before the Ontario Human Rights tribunal; and workplace safety issues. MCSA also represents clients in regard to immigration matters. This may include processes to regularize clients' status in Canada or to appeal denials of applications for permanent residence or citizenship. The vast majority of the clients of MCSA are newcomers and immigrants who have arrived in Canada within the last 10 years.

MCSA regularly convenes public legal education seminars to educate the community about their legal rights. MCSA has long advocated for worker rights and protections for all residents of Ontario, including migrant workers and newcomers.

MCSA welcomes the introduction of Bill 49, as it is an opportunity for this government to show leadership in providing real protections for all workers in Ontario, and migrant workers in particular, as they are especially vulnerable. In our view, however, much more can and should be done under the authority of a bill designed to not only recognize the important role of immigrants in Ontario's economy, but also the commitment of the Ontario government to family and humanitarian issues that Bill 49, as currently written, may be capable of achieving.

My colleague, Ms. Wang, will now give our comments on our technical recommendations on the bill.

Ms. Ruoxi Wang: I will give a summary of our recommendations. Please refer to our written submissions, that we have already handed out, for details.

First, we recommend removing the latter part of subsection 16(3). The bill empowers the director to grant an application under the selection program. Subsection 16(3) provides that the director can dismiss the application if, among other things, the applicant has been represented, advised, or assisted by a person or body that is subject to a ban under the legislation.

This provision is problematic for two reasons. First, it punishes the applicant for the representative's or recruiter's violation of the law, and it puts the burden of finding out whether a representative or a recruiter is subject to a ban on the shoulders of already vulnerable migrant workers.

Also, read together with subsection 14(2) of the bill, which specifically allows an individual to give advice on an application directly to the representative of such an

application, an applicant would be required to find out whether the representative is subject to any ban and also whether any of the individuals who have advised that representative are subject to a ban. Such a requirement is an unfair burden and reinforces the power imbalance between migrant workers and employers.

The second recommendation is to remove section 18(1)(c)(i). Once the application is approved, section 18(1)(c)(i) permits the director to cancel the approval upon the employer's written request. This provision opens the floodgates to abuse, because employers are already in a more powerful position in terms of controlling the work conditions and the employment terms. It provides employers with unfair bargaining power in negotiating employment terms.

Also, if employers are given power to have a direct say on whether a migrant worker's work permit should

be cancelled-

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Ruoxi Wang: —it enables employers to use the worker's immigration status as a weapon against them.

The third recommendation is to revise subsection 18(1) and section 28 to provide appropriate restrictions and penalties for violation of any labour law, including human rights law.

The next recommendation is to add provisions to allow an applicant to request the director to hold a hearing, to decide whether to ban an application-

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wang. The floor goes to Ms. Martins: five minutes.

Mrs. Cristina Martins: I want to thank the Metro Toronto Chinese and Southeast Asian Legal Clinic for taking the time to be here today, and for your submissions and your deputations here this afternoon. I want to thank you for all the fine work that you do.

As you know, we sometimes hear stories of recent immigrants who come to Ontario. We talk about these vulnerable immigrants and their lack of understanding of their rights and how to navigate the system here in Ontario. Can you tell me a little bit about how your organization works to ensure that these newcomers have an easier transition to life in Ontario and in Canada?

Ms. Natasha Tso: Thank you for your question. One of the many things that we do is, we engage in public legal education seminars. There's a great deal of community outreach that we partake in as part of our work. We really hope to educate the public more, but especially within our community, because we are a specialty legal clinic and we serve the community, which has trouble accessing justice because of the language barriers in the Chinese, Vietnamese, Laotian and Cambodian languages. We do quite a bit of outreach to these communities in order to educate them about their legal rights, not just with respect to workplace violations and standards and human rights discriminations and things like that. So we do quite a bit of that.

As well, we do representative work in these areas. We represent clients in their complaints with the Ministry of Labour, before the Ontario Human Rights Tribunal and also with certain selected immigration matters.

Mrs. Cristina Martins: As you know, the Temporary Foreign Worker Program is a federal program, and, unfortunately, we do not have any jurisdiction over that

particular program here in Ontario.

They've recently made a number of changes to the program. We heard earlier this morning some the hardships that this has imposed on many of the new immigrants coming to Ontario. I just wanted to get your view on how these changes are impacting temporary foreign workers during their stay here in Canada. What has been your experience with this?

Ms. Natasha Tso: I think the key for any migrant worker to Canada is that, really, their immigration status puts them in a more precarious position as compared to workers who have regularized status in Canada. We are so heartened by this bill, because it actually brings workplace safety, employment standards control and immigration within the control of the Ontario government. We see this as a really positive sign to be able to join those two things together because they are absolutely related. There is a strong and direct connection between an immigrant who comes to Canada and to Ontario because of their work status, because of a work permit and their ability to work in Ontario, and their immigration status hinges on that.

We really feel that this is a good opportunity for this government to show leadership in that regard, to protect worker rights through the combining of employment standards and workplace safety issues together with the immigration status of the individuals. Although there are a number of changes that are expected to the TFW program, we are really heartened by this new bill.

Mrs. Cristina Martins: Thank you very much. Those

are all my questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Martins, and thanks to you, Ms. Tso and Ms. Wang, for your deputation on behalf of Metro Toronto Chinese and Southeast Asian Legal Clinic.

LONDON-MIDDLESEX IMMIGRANT EMPLOYMENT COUNCIL

The Chair (Mr. Shafiq Qaadri): I invite our next presenter to please come forward, Mr. Kotsiomitis of London-Middlesex Immigrant Employment Council. Welcome. You know the protocol. I invite you to begin now.

Mr. Gus Kotsiomitis: Good afternoon. My name is Gus Kotsiomitis. I'm the vice-president of commercial markets for RBC Royal Bank in the London-Middlesex-St. Thomas region. Here, I'm wearing a different hat, as the chair of the London-Middlesex Immigrant Employment Council. The LMIEC is a business-led organization that is connecting local employers to Canadian newcomers and, in turn, growing our local economy.

I was also privileged to be part of the expert panel back in 2012 on immigration and the recommendations, some of these that you are seeing here in front of you. I was also past president of the London Chamber of Com-

merce, so I talk from various voices.

I'm very pleased to speak with you today on the importance of Bill 49, the establishment of the Ontario Immigration Act, in particular to our region of London-Middlesex.

I would like to provide you a little bit of context about LMIEC and how LMIEC supports Bill 49 and the implementation of the Ontario Immigration Act.

I've had the pleasure of chairing the LMIEC since it was launched in 2008. I can tell you it wasn't very popular in the business community back at that time, in 2008. Since that time, London's unemployment rate has been, as we all know, at times among the highest in the country and well above the provincial average. Job creation in our community has been relatively flat, and the total number of people employed has dropped and our labour force has actually decreased in size—not good.

Despite these challenges, businesses in London continue to report difficulties in finding talent they require to grow to their businesses. As reported by the Ontario Chamber of Commerce—and we heard earlier from our friend Liam from the Ontario chamber—32% of employers surveyed in London reported difficulty in filling job openings because they couldn't find the right qualifications, the right individuals. This was a higher percentage in other municipalities, including Toronto, Windsor, Niagara and Kitchener.

Labour shortages are different from skilled shortages, as we've heard. Proactive steps need to be taken to help businesses connect with the talent they require or they will go elsewhere. It's a war for talent.

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Of course, London is not alone. Many cities in this wonderful province are experiencing a skills crunch, and our community is no exception. More and more industries are requiring highly specialized skills today and, more importantly, for tomorrow. With aging populations, skill gaps are only going to continue to grow. Companies in Canada's mid-sized centres and smaller cities are the hardest hit, for obvious reasons.

The LMIEC has grown from an initial task force of 14 employers to a council of over 250 employer leaders connecting over 1,000 regional businesses to date. As regional business leaders, we are all aware that attracting and retaining skilled immigrant talent is a critical element of fuelling transformational change in what we want to do in the London and Middlesex community.

The LMIEC helps companies in London to connect to top newcomers who want to settle in our community, and to draw talent from other regions and fill their skilled talent needs today and fuel job growth for all Londoners.

I simply think that it is directly tied to our standard of living. If we don't do this right, we're going to pay a price down the road.

The LMIEC is working with local employers to address short-term labour shortages and also look at proactively being in position for what they need going forward.

Many cities across Canada have immigrant employment councils. These immigrant employment councils

are key allies to local communities. In Ontario, there is the TRIEC, the Toronto Region Immigrant Employment Council, and North Bay, Niagara and Ottawa have their own councils. So we really support these, and would encourage the committee to support these, from a business-led perspective, and that's why I've been engaged for the last eight years. When this happens, companies grow, fuelling job creation etc.

These resources include three very important Ontario bridge-training programs. This is what we've done recently: the LMIEC Job Match Network, attracting, screening and shortlisting qualified talent for job opportunities that are presently going unfilled. We make SMEs aware of what these opportunities are. We pre-screen language level; a lot of these medium enterprises don't have the time or resources to do that. We also have the mentorship program. I've been a mentor for six or seven years, and it's a wonderful experience. I would encourage all of us to do that. We also have the Access Centre for Regulated Employment. We talked about that a little bit earlier. In addition to these resources, LMIEC employers continue to express the need for additional resources.

The act: LMIEC believes that new Ontario-determined immigration programs designed to attract international—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Gus Kotsiomitis: Thank you. We also support the provincial registry. A recruiter registry is key.

I'll just summarize. In conclusion, I would also like to note that LMIEC strongly supports, as I said, the strategy to help the province achieve its strategic goals. Raising the proportion of economic immigrants to 70%—that's what we recommended, with the expert panel, back in 2012—from the current level of 52% is key. A significant increase in Ontario's provincial nominee program is key. Providing more resources for employers to recruit—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kotsiomitis.

Mr. Gus Kotsiomitis: Thank you.

The Chair (Mr. Shafiq Qaadri): Now the floor passes to Mr. Smith and Mr. MacLaren—five minutes.

Mr. Jack MacLaren: Do you have any concerns about the legislation as it is written at the moment?

Mr. Gus Kotsiomitis: If I wear my LMIEC hat, no, absolutely not. We're very happy with it. As I said, the journey has been, for me, personally, the last three or four years—but certainly, the key will be to make sure that we assist the small and medium enterprises that create the wealth and economic opportunities, to make sure it's simple and fast, and the resources are managed appropriately, and we make it as easy as possible for these entrepreneurs.

Mr. Jack MacLaren: We've had previous presenters being concerned that there was some red tape included here, like registry councils. For small and medium-sized business, like you're talking about, less red tape is usually a good thing?

Mr. Gus Kotsiomitis: Absolutely.

Mr. Jack MacLaren: So is that something, if that was made simpler or less, that you would like to see included?

Mr. Gus Kotsiomitis: Absolutely.

Mr. Jack MacLaren: Is this registry something that you see as necessary?

Mr. Gus Kotsiomitis: Absolutely. I was at a chamber meeting just yesterday with a number of business leaders in London. One concern is we're seeing more red tape, not less. The last thing we need is an immigration act to make it more difficult for these highly skilled individuals—that we want to keep in this province—to find gainful employment, because they'll go elsewhere. They don't need to stay here.

Mr. Jack MacLaren: Do you see a need for the

registry at all?

Mr. Gus Kotsiomitis: I think the registry provides some balance. Again, a lot of these SMEs and smaller businesses don't have the resources. So as long as it meets the timelines that it needs—I think we need to have it. We can't have a completely open forum. I think it needs some kind of—how do I say it?—process in place. The challenge we've had in the past, as we all know, is that it has taken far too long.

Mr. Jack MacLaren: Right. Is there anything else

you'd like to say?

Mr. Gus Kotsiomitis: No. On behalf of LMIEC, and certainly the organizations where I've worked in the past, I want to applaud the province for moving here. It has been a journey and I'm happy to see it, after my personal inclusion back in 2012 and other discussions I've had with the ministry. It's wonderful. I applaud the province for bringing it to this level. It's high time in coming, and well done.

Mr. Jack MacLaren: Thank you. Mr. Gus Kotsiomitis: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kotsiomitis, for your deputation on behalf of the London-Middlesex Immigrant Employment Council.

LA PASSERELLE-INTÉGRATION ET DÉVELOPPEMENT ÉCONOMIQUE

Le Président (M. Shafiq Qaadri): Maintenant j'ai le plaisir d'accueillir notre prochain présentateur, représentant La Passerelle-Intégration et Développement Économique, M^{me} Léonie Tchatat. Correct?

M^{me} Léonie Tchatat: Oui.

Le Président (M. Shafiq Qaadri): Oui, d'accord. Asseyez-vous. Vous avez cinq minutes, comme vous le

savez. S'il vous plaît, commencez maintenant.

M^{me} Léonie Tchatat: Merci. Monsieur le Président du comité, mesdames et messieurs, bonjour. Je m'appelle Léonie Tchatat et je suis la directrice générale de La Passerelle-Intégration et Développement Économique, un organisme basé ici à Toronto. La Passerelle a été créée il y a 20 ans. Notre mission est de soutenir l'intégration et le développement économique des jeunes francophones de toutes origines.

En tant qu'organisme leader franco-ontarien, La Passerelle soutient entièrement la recommandation de l'adoption unanime du projet de loi 49 par l'Assemblée législative de l'Ontario. Cette adoption unanime enverrait un message mondial clair que l'Ontario est ouvert aux immigrants.

S'il est adopté, le projet de loi 49 donnerait au gouvernement des outils juridiques nécessaires à une mise en oeuvre fructifère de la Stratégie ontarienne en matière d'immigration. Cette stratégie est importante pour les Franco-Ontariens, et pour tous les Ontariens.

Dans le cadre de la stratégie d'immigration, le gouvernement de l'Ontario a consulté un ample éventail de chefs de file franco-ontariens dans les domaines de l'immigration, de l'éducation, de la santé et d'autres secteurs, de partout dans la province, en vue de saisir les besoins et aspirations franco-ontariens en matière d'immigration. La stratégie d'immigration intègre et répond entièrement aux besoins et aspirations de la communauté franco-ontarienne dans ses principes et méthodologie et par l'entremise d'une cible claire et explicite: 5 % des nouveaux immigrants par année en Ontario sont des francophones. Elle s'engage à utiliser tous les mécanismes à la portée du gouvernement provincial pour atteindre cette cible, tel que le Programme des candidats de la province. Ces principes et ces engagements ont été largement célébrés par la communauté franco-ontarienne dans son ensemble.

Outre ces aspects relatifs à la communauté francophone de l'Ontario, notre soutien à l'adoption du projet de loi 49 prend appui sur les deux raisons suivantes : il traduit, pour l'Ontario, la compréhension la plus prometteuse du soutien mutuel entre une intégration juste, efficace et significative des immigrants, d'une part, et la prospérité économique de la province, d'autre part; et, tout en faisant preuve d'une forte emphase sur la prospérité économique, il y a un équilibre entre les engagements dans un tel domaine et ceux relatifs à la catégorie familiale, les réfugiés et l'immigration humanitaire.

Nous sommes fiers que la loi reconnaisse l'apport des immigrants francophones à l'économie de l'Ontario, qui, de par leur bilinguisme et leurs connexions à l'international, ouvrent des ponts commerciaux entre les pays francophones du monde.

Avant de clore mes remarques et de répondre à vos questions, j'aimerais partager avec vous quelques chiffres pertinents pour l'immigration francophone en Ontario et la prospérité économique de la province. Un document récent du centre Mowat souligne l'impact positif du fait de compter sur des diasporas pleinement intégrées en termes de capital humain, connexions mondiales et commerce international. La Francophonie internationale est responsable de 20 % du volume du commerce mondial. L'Afrique est le continent à la croissance la plus rapide et dont le produit brut aura doublé au cours de 10 ans pour atteindre 3,7 milliards de dollars. II y a un énorme potentiel pour l'Ontario si on puise dans l'immigration francophone de manière optimale et possible.

Je vous remercie.

Le Président (M. Shafiq Qaadri): Merci, madame Tchatat. Vous avez maintenant cinq minutes avec mon collègue du NPD, M. Natyshak. Cinq minutes.

M. Taras Natyshak: Merci, monsieur le Président, et merci, madame Tchatat. C'était un plaisir d'entendre votre présentation. J'ai deux simples questions. Je comprends qu'en fait vous donnez à ce projet de loi un appui universel. Je voulais seulement savoir s'il n'y a aucun problème dans ce projet de loi que vous envisagez en ce moment ou si c'est un projet de loi qui adresse tous les « concerns » que les francophones ont.

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M^{me} Léonie Tchatat: Voilà. Merci, monsieur. Je pense que, pour le moment, ça se traduit très bien par la volonté de la communauté francophone et de La Passerelle d'appuyer ce projet de loi. Certainement dans l'avenir et la mise sur pied de ce projet de loi, on voudrait voir encore plus de participation active des francophones au sein de ce projet de loi.

Il faut aussi noter qu'on va célébrer cette année les 400 ans de la francophonie, donc ça tombe pile, un tel projet de loi qui vient effectivement supporter tout le positionnement de la communauté franco-ontarienne dans le cadre du développement de la prospérité de la communauté.

M. Taras Natyshak: Et voilà pourquoi nous sommes tellement fiers de vous avoir ici en présentation aujourd'hui. Si vous pouvez nous donner un exemple des défis auxquels les nouveaux immigrants font face quand ils viennent ici à la province de l'Ontario, si c'est en trouvant de l'emploi ou les services en langue française? Donnez-nous des exemples, s'il vous plaît.

M^{me} Léonie Tchatat: Au fait, La Passerelle travaille depuis les 20 dernières années à l'intégration des immigrants francophones et à leur épanouissement, une fois établis.

D'ailleurs, nous avions lancé récemment, avec votre gouvernement, une campagne qui promeut encore l'apport de l'immigration francophone.

Mais en tant qu'exemples clés, je pense qu'il est important pour les immigrants de bien comprendre, même avant leur départ, dans quel contexte et dans quel pays ils vont s'intégrer. C'est pour ça que quand j'étais membre du comité de la table ronde, j'ai proposé qu'il y ait vraiment des services adéquats pour les immigrants avant leur arrivée en Ontario. Ça facilite le processus d'intégration une fois sur pied.

Et aussi, nous avons développé à La Passerelle un programme en compétences culturelles qui sensibilise les immigrants qui viennent d'arriver à la nouvelle terre d'accueil, mais qui sensibilise aussi les institutions, les organismes et les employeurs à embaucher les immigrants francophones comme une valeur ajoutée.

De l'autre côté, c'est vrai que quand les immigrants arrivent, tout le processus de réfection de leur profil, par exemple dans le cadre de la recherche d'emploi, dans le cadre de la compréhension même du système en général, c'est souvent un défi, et aussi la question du bilinguisme. Certains sont francophones, la raison pour laquelle à La

Passerelle nous encourageons beaucoup nos clients à parler anglais s'ils veulent vivre à Toronto, par exemple.

Je veux rapidement vous faire une petite anecdote. Il y a quelques mois, nous avions fait un sondage auprès de notre clientèle. Ce sont de jeunes immigrants entre 18 et 35 ans qui ont trouvé un emploi, qui parlent anglais et qui travaillent dans les institutions financières et autres. Ça, c'est le profil positif des immigrants. Ils sont bien établis. Ils se sentent en sécurité et ils contribuent à la valeur économique et à la prospérité économique de l'Ontario.

M. Taras Natyshak: Bon, merci pour tout le travail que vous faites et merci pour votre présentation ici

aujourd'hui.

M^{me} Léonie Tchatat: Merci beaucoup.

Le Président (M. Shafiq Qaadri): Merci, monsieur Natyshak, et à vous aussi, madame Tchatat, pour votre députation représentant La Passerelle-Intégration et Développement Économique.

ASSEMBLÉE DE LA FRANCOPHONIE DE L'ONTARIO

Le Président (M. Shafiq Qaadri): Maintenant je voudrais accueillir notre prochain présentateur, M. Hominuk, directeur général de l'Assemblée de la francophonie de l'Ontario. Bienvenue. Asseyez-vous, s'il vous plaît. Comme vous avez vu le protocole ici, vous avez cinq minutes pour vos remarques introductoires et après des questions par le gouvernement. S'il vous plaît, commencez.

M. Peter Hominuk: Avant de débuter—before I start, we're going to distribute a medallion to each of you. As you know, the francophone community is celebrating 400 years of francophone presence this year. It's commemorating also the arrival of Samuel de Champlain in 1615. What an appropriate time to speak about immigration, as he was one of the first immigrants to our province.

Le Président (M. Shafiq Qaadri): Le premier cadeau

aujourd'hui.

M. Peter Hominuk: Votre premier cadeau. En tout

cas, merci beaucoup.

Honorables membres du comité, je suis heureux d'être ici. Je suis Peter Hominuk, directeur général de l'Assemblée de la francophonie de l'Ontario. Je vous remercie de nous convier à cette discussion portant sur l'étude que vous menez actuellement concernant le projet de loi 49, la loi portant sur l'immigration en Ontario.

Le préambule de ce projet de loi mentionne que l'un des objectifs de cette loi est de « permettre aux collectivités de partout en Ontario, y compris les communautés franco-ontariennes, d'attirer, d'accueillir et

d'intégrer les immigrants ».

Cet énoncé montre manifestement que la loi revêt une grande importance pour les francophones de l'Ontario puisqu'elle énonce clairement la nécessité de protéger les intérêts des francophones de l'Ontario en matière d'immigration.

La communauté est reconnaissante que la lentille francophone fasse partie du projet de loi en matière d'immigration et que la province se soit donné une cible de 5 % en immigration francophone. Nous sommes en accord avec ce qui est proposé dans ce projet de loi.

La raison de notre intervention aujourd'hui tient plutôt d'une inquiétude de la communauté sur le plan de la mise en oeuvre de cette loi. La communauté souhaiterait avoir la possibilité d'appuyer beaucoup plus les actions gouvernementales en matière d'immigration francophone dans l'optique de développer une gestion par et pour les francophones. Nous voulons travailler de concert avec les deux paliers de gouvernement en vue de concevoir un plan d'action pour la francophonie ontarienne. Les Franco-Ontariens désirent être impliqués à chaque étape du développement de la stratégie en immigration francophone et ils veulent pouvoir en être les maîtres d'oeuvre.

L'Ontario regroupe la plus grande communauté francophone en milieu minoritaire au Canada. Elle se chiffre présentement à 611 500, et c'est plus de la moitié des francophones hors Québec. Devant un tel constat, on voit à quel point l'immigration francophone a une grande importance pour l'Ontario français.

C'est dans cette perspective que je vous présente les recommandations qui suivent au nom de l'assemblée :

—qu'il est impératif d'améliorer les structures communautaires existantes pour réussir l'inclusion et l'intégration des nouveaux arrivants au sein de notre communauté et que des ressources financières adéquates soient fournies;

—qu'il y ait une meilleure coordination entre l'Ontario, CIC et la communauté francophone de l'Ontario. L'absence de coordination entre ces trois intervenants engendre des difficultés notoires;

—que le gouvernement de l'Ontario travaille plus étroitement avec le gouvernement fédéral et Citoyenneté et Immigration Canada afin de développer rapidement un plan d'action visant à atteindre la cible de 5 % d'immigrants francophones que la province s'est fixée;

—que le gouvernement de la province s'implique dans l'élaboration d'outils de promotion à développer un partenariat avec la communauté francophone de manière à présenter aux futurs immigrants les possibilités de vie en français ici en Ontario;

—que le seuil de rentabilité des régions minoritaires et éloignées soit adapté à la réalité de ces régions et que d'autres services soient ajoutés aux appels d'offres si les

investissements ne sont pas justifiables;

—que la formation à l'employabilité soit faite par les institutions francophones ou bilingues capables de veiller à l'inclusion des immigrants dans la communauté francophone, tout en tenant compte du besoin en anglais langue seconde et en formation, afin que ces initiatives répondent adéquatement à l'objectif d'inclusion et d'intégration dans la francophonie ontarienne.

Enfin, l'assemblée appuie les 32 recommandations formulées dans le rapport final de la Table ronde d'experts sur l'immigration, qui a été produit en septembre 2012. Je vous promets, je ne lis pas les 32 recommandations. Vous les avez en annexe dans la documentation qui vous a été distribuée.

Merci.

Le Président (M. Shafiq Qaadri): Merci, monsieur Hominuk. Maintenant, je passe la parole à M^{me} Martins : cinq minutes.

M^{me} Cristina Martins: Merci, monsieur le Président, et merci, monsieur Hominuk, d'être ici aujourd'hui et pour contribuer à cette discussion sur le projet de loi 49.

You talk here about—and I believe what you're insinuating here is that you agree that we do and should have the 5% target for francophone immigrants. You see that it is important that we include that as part of this bill.

Can you tell me about the positive impacts that francophone immigration has on Ontario's communities and why it is so important, then, that we ensure that we

meet that 5% target?

Mr. Peter Hominuk: Thank you very much for your question. Francophone immigrants are positive within the francophone community in terms of helping us maintain this. We're at about 5% of the population of Ontario, and to us, immigration is one of the ways we can continue to maintain that 5%. For us, the 5% is very important. That's why the province set the 5% as the target.

In terms of what they contribute to the province of Ontario, I think a lot of it is economic. It's in all facets of life here in Ontario. Francophones and francophone immigrants contribute in science and education, in all spheres of life here in Ontario. They are a very important

part of the francophone community.

Mrs. Cristina Martins: What countries would you suggest we reach out to in terms of tapping into that pool

of knowledge?

Mr. Peter Hominuk: I'm not the expert in francophone immigration, but we're meeting a lot of francophones who have integrated very well in Canada who are from Africa, from Congo, from all the other African countries where they speak French, and definitely France, Belgium, Switzerland and the European countries. But, you know, there are immigrants who speak French in other parts of the world—Romania, China—so there are francophones who are from everywhere.

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Statistics show that within 20 years, over 700 million people on the planet will speak French, so it's still one of the important languages on our planet, and we need to make sure that Ontario capitalizes on that talent pool that is out there and helps make Ontario a more competitive place economically, and the great place to live that it is now today.

Mrs. Cristina Martins: Thank you. As you know—and you were sort of touching on that here, as well, with regard to Ontario's vision for immigration and it being based on inclusivity, diversity and respect for the cultural diversity that we do have here in this province. I'm very proud that I actually represent a riding that is perhaps one of the most diverse here in Ontario, so I know how important it is to maintain our cultures and understand where we come from.

With the proposed legislation that we have here on the table, how do you see it helping communities, in particular the Franco-Ontarian communities across Ontario,

to attract, welcome and integrate immigrants here into Ontario?

Mr. Peter Hominuk: Well. I think this is one of the questions and one of the reasons we wanted to be here today. There's no plan to do that, necessarily. The francophone community in Ontario wants to be part of putting in place a plan. We do have three réseaux de l'immigration that are working in the three regions north, south and eastern Ontario—but we need to have a provincial plan that helps integrate and make sure that our colleges and universities are included, that our school boards are included, that the health system, where it does exist in French, is included, so that we can bring all these people together and make sure that, when we do bring people to Ontario, we are helping them integrate, that we're helping them and showing them that they can actually exist and live in French in Ontario. Because if we're not doing that, why would we spend money to bring people to live here in French and then not help them stay francophone?

This is a message we gave to the official languages committee of the federal government a few weeks ago. To us, the two governments really need to work together, because it has to be an all-encompassing strategy that's put in place, and we would really like to help put that strategy in place with the government.

M^{me} Cristina Martins: Thank you. Pas d'autres

questions maintenant. Merci pour le cadeau.

M. Peter Hominuk: Merci beaucoup.

Le Président (M. Shafiq Qaadri): Merci, madame Martins, et vous aussi, monsieur Hominuk, pour votre députation, et aussi mon cadeau.

ONTARIO COUNCIL OF AGENCIES SERVING IMMIGRANTS

The Chair (Mr. Shafiq Qaadri): I would invite our next presenter to please come forward: Ms. Debbie Douglas, executive director of the Ontario Council of Agencies Serving Immigrants. Welcome. You have five minutes in which to make your presentation, to be followed by questions from the PC side. Please begin.

Ms. Debbie Douglas: Thank you. As you've heard, my name is Debbie Douglas and I'm from OCASI, the Ontario Council of Agencies Serving Immigrants. The council was founded in 1978 to act as a collective voice for immigrant-serving agencies in Ontario, and to coordinate responses to shared needs and concerns. We have about 220 member agencies across the province. We are a registered charity and we are governed by a volunteer board of directors. We do appreciate the opportunity to provide comments on the draft legislation.

The Ontario Immigration Act is the first of its kind in the province. OCASI welcomes the strong commitment to immigration and immigrant settlement and integration, including francophone immigration and settlement, expressed in this proposed legislation, and recognition of Ontario's family and humanitarian commitments. The bill affirms the importance of immigrants to Ontario and

the role that they play in shaping the economy, as well as Ontario's communities and society.

We welcome the recognition of the not-for-profit sector as a collaborative partner and recognition of the important role played by the sector in immigrant settlement and integration. We are encouraged by the intention to improve the protection of migrant workers, especially given the significant number of migrant workers in Ontario as temporary workers, notwithstanding the federal government's "four years in, four years out" rule.

We have a number of recommendations, but, being mindful of the time that I have, I will focus on the three key ones. I think you all have copies of my presentation. We offer the following suggestions with the intention of

strengthening the bill.

First, prioritize permanent immigration over temporary migration. The bill identifies collaboration with municipalities and employers to address Ontario's short-and long-term market needs as a goal. Permanent, rather than temporary, migration should be Ontario's preferred method of building a strong economy, as well as strong communities. Allowing employers to rely on temporary workers, particularly migrant workers, to meet long-term labour market needs is short-sighted. It creates a marginalized and vulnerable population of workers, drives down wages, widens regional labour market disparities, and worsens bad working conditions and unsafe workplaces.

A recent report by the Office of the Parliamentary Budget Officer warns that reliance on temporary migrant workers can also discourage employers and businesses from making important productivity-enhancing investments that help to boost overall workforce innovation

and economic growth.

Among all the regions in Canada, Ontario has, and continues to receive, the highest number of migrant workers, and the total number, regardless of category, is higher than the total number in Alberta. The number remains high despite a reduction in our share of permanent immigrants. Ontario receives the largest share of migrant workers, at 35.5%, compared to 20% for Alberta, and these are 2012 numbers. In 2012, there were 119,000 migrant workers here in Ontario.

Between 2004 and 2013, the number of temporary foreign workers in Ontario grew from 16,652 to 22,896, and migrant workers in the International Mobility Program grew from 22,000 to over 58,000.

During the same period, the number of permanent residents dropped from 125,000 in 2004 to 103,000 in 2013. We know that in 2011, it had gone as low at 99,000.

Our second recommendation: Expand selection for the provincial nominee program. Recently, thousands of migrant workers, especially those in low-skilled jobs, saw their work permits expire as of April 1, 2015, the deadline imposed by the federal government in 2011. Many employers, including several in Ontario, have called on the federal government to allow the affected workers to stay permanently, thus acknowledging that they were in fact filling long-term rather than short-term

labour market needs. However, only a small fraction of migrant workers qualify to become permanent residents.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Debbie Douglas: We are especially asking the province to take a look at using our PNP program to allow those who are not in the professional or highly-skilled trades to be able to use the PNP as a pathway to permanent residence. We especially want to highlight the role of international students with less than a master's degree program, who should be able to qualify through PNP without a job offer.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Douglas. The floor passes now to the Conservative side:

Mr. Smith.

Mr. Todd Smith: Debbie, you have a lot of information here, and if you want to continue, please continue to present.

Ms. Debbie Douglas: Thank you very much. I think the third one, that I really want us to pay attention to—the bill talks about a registry for employers of migrant workers. We believe the registry should be mandatory, especially for International Mobility Program workers, seasonal agricultural workers and domestic workers, both live-in and live-out caregivers.

But the bill does not stipulate that it should be compulsory. Without a compulsory registry for employers, the provincial government must rely on the federal government to identify employers of migrant workers. A compulsory registry will make this information more easily available to the province for proactive inspection and enforcement. This measure is particularly important to protect the rights of migrant domestic workers, who are typically invisible and isolated.

Immigration consultants often act as recruiters. Ontario will have to rely on the Immigration Consultants of Canada Regulatory Council to identify those involved with migrant workers' recruitment to Ontario. However, all recruiters may not be registered. A compulsory recruiter registry will give the province an additional mechanism to enforce provisions meant to protect

migrant workers from recruiter exploitation.

As you can see, there are a number of recommendations here. There is a proposal in the bill to have investigation and inspection be housed within the Ministry of Citizenship and Immigration. We are strongly suggesting that any inspection and investigation function is more appropriately located within the Ministry of Labour, which is already responsible for those functions.

The bill also makes a proposal that we have a two-year delay for the implementation of this piece. We're suggesting that if it is located within the Ministry of Labour, there is then no need for a delay in terms of implementation, because then it will be an extension of the work that the Ministry of Labour staff are already doing.

Mr. Todd Smith: There's also a section in there that gives the minister discretion to refuse applications. Is that

a concern for you at all?

Ms. Debbie Douglas: As long as there is some reporting-out mechanism—whether or not it's on an

annual basis in terms of when that discretion has been used—so that we have a sense of which categories of immigrants are being refused, then yes, I think some ministerial discretion is sometimes necessary.

Mr. Todd Smith: Okay. You have a number of other points here, and I'm curious about number 5: "Hold recruiters and employers jointly financially liable for violating labour protections." Can you expand on that one?

Ms. Debbie Douglas: The province of Manitoba is very clear that both recruiters and employers should be held responsible for any exploitation of migrant workers, as opposed to having them play off against each other. We are suggesting very strongly—and if you look under our number 7, other recommendations, we are strongly suggesting that Ontario take a look at the Manitoba legislation, which outlines very clearly some of these remedies.

Mr. Todd Smith: How much time do I have?

The Chair (Mr. Shafiq Qaadri): Two minutes.

Mr. Todd Smith: The Manitoba legislation: Is that the preferred legislation in the province—

Ms. Debbie Douglas: Yes, it is. In terms of governing

migrant workers, yes.

Mr. Todd Smith: Okay. We talked at length this morning about issues in the mushroom industry, and I'm sure if you're aware of them at OCASI—

Ms. Debbie Douglas: No, I'm not.

Mr. Todd Smith: One other question that I did want to ask you and OCASI about—the immigration that is occurring in the province: Is it being spread out enough across the province? There are unique needs in rural Ontario. Do you find that it is being spread out enough, or is it concentrated more in the GTA?

Ms. Debbie Douglas: It tends to be concentrated in the greater Toronto area. I was just in conversation with some colleagues from Windsor who are very much concerned at their low numbers. We know that unemployment numbers are high in Windsor, but they are also concerned that they're not getting in as many immigrants as they would expect. Our colleagues in the north are also concerned.

What that remedy is, though—I know that the province through its settlement and integration program through the Ministry of Citizenship has tried to put investments in terms of services in the north. There may have to be some more incentives for getting immigrants to the north. I think we're all waiting for the development of the Ring of Fire. There's an expectation that that will create jobs and then generate communities, because folks not only tend to migrate to places where there are good jobs, but also to where communities have been established. So we're hoping that some sort of significant movement in terms of workplaces that will draw and attract huge communities will be an incentive for immigrants to be able to populate the north—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr.

Smith.

Thanks to you, Ms. Douglas, for your deputation on behalf of the Ontario Council of Agencies Serving Immigrants.

Ms. Martins, you had a suggestion or a point of order

regarding committee business?

Mrs. Cristina Martins: Yes, I do, Thank you, Mr. Chair. On a point of order: I believe that you will find that we have unanimous consent to adjourn next week's committee meeting at 10:15 and then reconvene the following week.

The Chair (Mr. Shafiq Qaadri): Thank you. Does

my colleague speak the truth?

Mr. Todd Smith: She does indeed in this case.

The Chair (Mr. Shafiq Qaadri): So be it. If that's the will of the committee, we'll—

Mr. Bob Delaney: She is a woman of honour.

The Chair (Mr. Shafiq Qaadri): The deadlines for the amendments stand as written. Our next official meeting will be only in the morning of next week, which is also budget day.

If there's no further business—

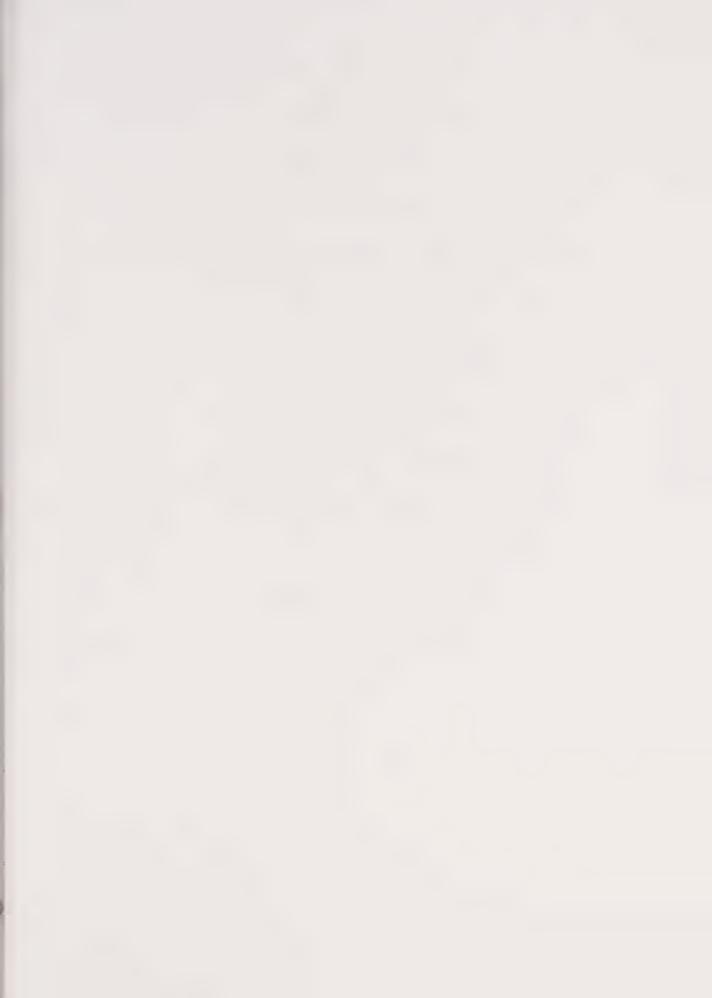
Interjection.

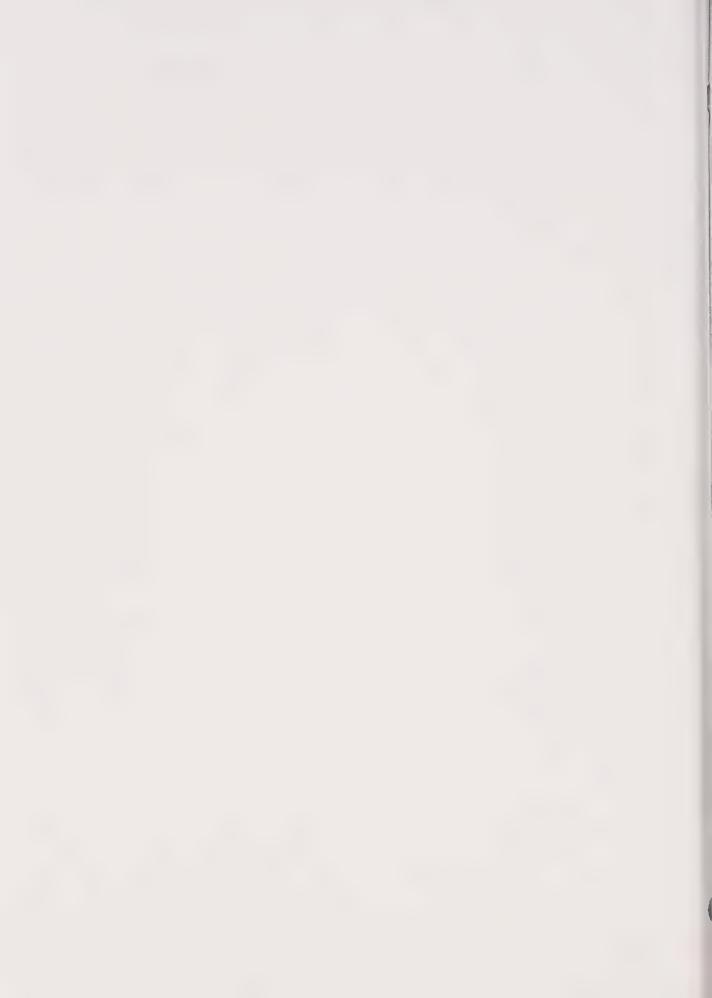
The Chair (Mr. Shafiq Qaadri): The official amendment, as I'm ably advised by my Clerk, is: amendment deadline 5 p.m., Tuesday, April 21, 2015, to her.

Thank you. The committee is adjourned.

The committee adjourned at 1454.







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Legislative Assembly of Ontario

First Session, 41st Parliament

Official Report of Debates (Hansard)

Thursday 30 April 2015

Standing Committee on Justice Policy

Ontario Immigration Act, 2015

Assemblée législative de l'Ontario

Première session, 41e législature

Journal des débats (Hansard)

Jeudi 30 avril 2015

Comité permanent de la justice

Loi de 2015 sur l'immigration en Ontario



Président : Shafiq Qaadri Greffière : Tamara Pomanski

Chair: Shafiq Qaadri Clerk: Tamara Pomanski

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 30 April 2015

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 30 avril 2015

The committee met at 0900 in committee room 1.

ONTARIO IMMIGRATION ACT, 2015 LOI DE 2015 SUR L'IMMIGRATION EN ONTARIO

Consideration of the following bill:

Bill 49, An Act with respect to immigration to Ontario and a related amendment to the Regulated Health Professions Act, 1991 / Projet de loi 49, Loi portant sur l'immigration en Ontario et apportant une modification connexe à la Loi de 1991 sur les professions de la santé réglementées.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. As you know, we're here for clause-by-clause of Bill 49, An Act with respect to immigration to Ontario and a related amendment to the Regulated Health Professions Act, 1991. The Chair welcomes Tonia Grannum, who will be pinch-hitting for Tamara Pomanski as Clerk today.

There is a written submission of summary from legislative research that is before you. The floor is now open for amendments.

Mr. Lorenzo Berardinetti: Carried.

The Chair (Mr. Shafiq Qaadri): Carried; there you go. Gentlemen, I believe you have the very first presentation coming up, or is—

Interjection.

The Chair (Mr. Shafiq Qaadri): Sorry. It's the NDP. Ms. Armstrong.

Ms. Teresa J. Armstrong: Chair, on a point of order: I want to say that the New Democrats on the committee—that we, of course, have long called for immigration legislation. We had wanted significant changes that recognize that large numbers of those who come and work and stay here are doing so in low-wage, often temporary jobs, and are paying thousands to do so and have few protections. We want to see protections in place for them.

This after all, in many respects, is a labour bill. People come here, work hard, and they deserve basic recognitions and protections that other Ontarians enjoy. So I respectfully offer some amendments and hope that this committee will see that New Democrats only want to make this bill better. Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Sure. First of all, that's not a point of order. You're welcome to make

comments, as the amendments are proposed and so on. You're allowed to speak to them. I invite you now to present the first one.

Ms. Teresa J. Armstrong: I move that the definition of "recruiter" in subsection 1(1) of the bill be struck out and the following substituted:

"'recruiter' means a person, including a consultant, who, for consideration, provides or offers to provide any of the following services in connection with a selection program:

"1. Finds or attempts to find a foreign national for

employment.

"2. Finds or attempts to find employment for a foreign national.

"3. Assists another person or body in attempting to do any of the things described in paragraph 1 or 2.

"4. Refers a foreign national to another person or body to do any of the things described in paragraph 1 or 2; ('recruteur')."

The Chair (Mr. Shafiq Qaadri): Thank you. Any comments, questions, queries or debate before we

proceed to the vote? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: First of all, Chair, I did have some opening remarks that I was hoping to be able to make, but we can go straight to this for now. But I would like to ask your indulgence after we take this to a vote to perhaps do some opening remarks. Would you be open to that?

The Chair (Mr. Shafiq Qaadri): Sure. That's fine.

Ms. Indira Naidoo-Harris: Is everybody else okay with that?

The Chair (Mr. Shafiq Qaadri): That's fine. Let's proceed with this particular amendment. Any comments on this specific amendment?

Ms. Indira Naidoo-Harris: Yes, I do have some comments. I want to make sure that we're talking about the same thing, about motion 1, section 1, subsection (1). To me, this particular motion and this particular subsection (1) of the bill seems redundant, because it really seems that this motion is already captured in subsection 1(2) of the Ontario Immigration Act. It's just my opinion, but I feel like this is already something that's being referred to in the Ontario Immigration Act. I don't know if anybody else agrees with me.

The Chair (Mr. Shafiq Qaadri): Thank you. Any further comments from the PCs or NDP before we proceed to the vote on NDP motion 1? Seeing none, we'll

proceed to the vote. Those in favour of NDP motion 1, if any? I presume—

Interjection.

The Chair (Mr. Shafiq Qaadri): Yes. Those against? NDP motion 1 is lost.

Shall section 1 carry? Carried.

Before proceeding to section 2—no amendments, I think, have been received so far. Ms. Naidoo-Harris and any others, if you'd like to offer any comments generally, the floor is open.

Ms. Indira Naidoo-Harris: Thank you so much, Chair. I really want to tell you how pleased I am to have this opportunity actually to address the committee. This is really an honour and a privilege, and I hope you'll indulge me just for a few minutes.

I'd like to thank everyone for being here today to continue debate on Bill 49, the Ontario Immigration Act. This is a bill that speaks to the very core of who we are as a society, that understands the rich history of immigration in Ontario and that looks to build on the important role that new immigrants have played in our province's development and prosperity.

As someone whose family immigrated here from South Africa, it also carries special significance for me. Growing up in rural Alberta, I experienced first-hand what it's like to be considered "the outsider." When I got older and began working as an anchor at Omni Television, it really opened my eyes to the hardships faced by newcomers to this province. I was on the ground level, covering emerging stories and getting first-hand accounts from new Ontarians about the difficulties they had in establishing their new lives here. These were people struggling to find safe places to live, struggling to find good jobs, and struggling to put down roots and become part of their new community.

But they never lost optimism, and many of those that I spoke with claimed that they had come here in search of freedom and opportunity, with the goal of one day being able to call Ontario home and to mean it. They saw this province as a place to raise their families, a place with top schools, world-class health care and a thriving economy—a place that welcomed people from every corner of the globe and understood the value of creating a diverse society. This was their vision of Ontario, and this is the kind of vision that this bill aims to preserve.

During second reading, we were pleased to hear general support from both opposition parties, as well as support from many stakeholders during public hearings. I hope we can work together to continue that positive dialogue today, right here.

I would like to acknowledge that this proposed legislation is a big step in the progression of Ontario's first-ever immigration strategy, launched back in 2012.

Bill 49 is a beginning, not an end. The Ontario Immigration Act will formally recognize the long history of immigration to Ontario and the important nation-building role it has played in forming Ontario's social, economic and cultural values.

I have further remarks, Chair, but I don't want to hold the committee up, so I will end my comments there and just say that it is a privilege and an honour to be here with you all today. We have the opportunity now, and in this committee, to take another vital step in the right direction, to keep Ontario strong and prosperous, and to keep our province moving forward.

I look forward to the debate we'll have here today.

Le Président (M. Shafiq Qaadri): Merci, madame Naidoo-Harris, pour vos remarques. Y a-t-il d'autres commentaires? Anyone else, before we proceed to NDP motion 2? Mr. Milczyn.

Mr. Peter Z. Milczyn: Thank you, Mr. Chair. I am subbing on the committee, but this is an issue that I've been following carefully. Like many in this room and elsewhere, I am the child of immigrants. Perhaps in other times, the path to immigration was a little bit easier. Canada was perhaps much more wide open in the 1950s and 1960s to immigrations from Europe. After that, it opened up to other parts of the world.

During the 1980s and 1990s, as I became an adult and became active in the community in various ways, and especially in my Polish-Canadian community, I was very distressed to see the number of people who were hanging out a shingle, representing themselves as immigration consultants and as people assisting others in securing entry to Canada and, ultimately, citizenship. Through that, there were many people who were greatly helped, but there were many people who were really taken advantage of by charlatans and, frankly, in some cases, criminals.

I applaud that the federal government took great steps to codify and register immigration consultants. But I'm very happy that in this piece of Ontario legislation, we're building on that and making sure that in our Ontario Provincial Nominee Program and in the other programs related to it, there will be enforcement and investigation tools to make sure that prospective immigrants to this province are not taken advantage of by those who would simply try to profit from their desire to become residents of this province.

0910

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Milczyn. If no further comments, we'll proceed. Three sections are without amendments, so we'll perhaps consider those as a block. Shall section—

Interjection.

The Chair (Mr. Shafiq Qaadri): Unless there's any comment on these particular sections: 2, 3 or 4. If not, shall sections 2, 3 and 4 carry? Carried.

We'll now go to section 5: NDP motion 2. Ms. Armstrong?

Ms. Teresa J. Armstrong: I move that subsection 5(1) of the bill be amended by striking out "The Lieutenant Governor in Council may, by regulation, establish" and substituting "The Lieutenant Governor in Council shall establish".

The Chair (Mr. Shafiq Qaadri): The floor is open to you, Ms. Armstrong, for comments, and then to others.

Ms. Teresa J. Armstrong: I just think "shall" is a stronger message with regard to the powers of the Lieutenant Governor and how to direct them in this bill. Since we have been many years in waiting for a legislative bill on immigration, I think making that word stronger is an important message to stakeholders and people who will be affected by the bill.

The Chair (Mr. Shafiq Qaadri): Further comments

on NDP motion 2?

Ms. Indira Naidoo-Harris: I really think that Bill 49 already provides authority to establish recruiter and employer registries through regulation. I feel that the registries are one form of regulation, but, really, there are many other tools that we have that we could be using. I'm not really sure that this is a step we have to take. Those are my thoughts on this.

The Chair (Mr. Shafiq Qaadri): Thank you. Any further comments on NDP motion 2? Seeing none, we'll

proceed with the vote.

Mr. Peter Z. Milczyn: Mr. Chair, as a matter of procedure, could I request a recorded vote for each clause?

The Chair (Mr. Shafiq Qaadri): You can. I think you have to do it individually, but that's fine. We'll attempt to orchestrate that.

Mr. Peter Z. Milczyn: I will be doing that, so I'm requesting a recorded vote on this clause.

The Chair (Mr. Shafiq Qaadri): Fine.

Ayes

Armstrong.

Navs

Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): NDP motion 2 falls. Next is NDP motion 3.

Ms. Teresa J. Armstrong: I move that subsection 5(2) of the bill be amended by striking out "If the Lieutenant Governor in Council has established an employer registry".

The Chair (Mr. Shafiq Qaadri): Comments are

open.

Ms. Indira Naidoo-Harris: Chair, I just want to be clear: We're talking about subsection 5(2) of the bill?

The Chair (Mr. Shafiq Qaadri): Please repeat.

Ms. Indira Naidoo-Harris: Subsection 5(2)—motion 5.

The Chair (Mr. Shafiq Qaadri): That is our understanding. Ms. Armstrong, that's clear to you as well, that NDP motion 3 is referring to that?

Ms. Teresa J. Armstrong: Yes, the third motion.

The Chair (Mr. Shafiq Qaadri): Yes.

Ms. Indira Naidoo-Harris: Thank you.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Ms. Indira Naidoo-Harris: Again, I think this is referring to the same thing we talked about earlier. There are many forms of regulatory tools. We're already investing in, I think, some strong compliance mechanisms. I really don't feel that this motion is necessary.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments? We'll proceed to the recorded vote.

Mr. Peter Z. Milczyn: Recorded vote.

Ayes

Armstrong.

Nays

Berardinetti, Crack, Lalonde, MacLaren, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): NDP motion 3 falls.

Shall section 5 carry? Carried.

We'll now proceed to section 6: NDP—*Interjection*.

The Clerk of the Committee (Ms. Tonia Grannum): We've done the vote. Next time; you have to do it right away. We've already carried section 5.

The Chair (Mr. Shafiq Qaadri): Section 6: NDP

motion 4.

Mr. Grant Crack: Point of order-

The Clerk of the Committee (Ms. Tonia Grannum): We just carried section 5.

Le Président (M. Shafiq Qaadri): Mr. Crack, mon ami, s'il vous plaît, plus de café pour vous.

Section 6: NDP motion 4. Please proceed, Ms. Armstrong.

Ms. Teresa J. Armstrong: I move that subsections 6(1) and(2) of the bill be struck out and the following substituted:

"Recruiter registry

"6. (1) The Lieutenant Governor in Council shall establish a registry of recruiters.

"Requirement to act as a recruiter

"(2) No person shall act as a recruiter unless the person is registered in the registry."

The Chair (Mr. Shafiq Qaadri): Comments on NDP motion 4?

Mr. Peter Z. Milczyn: The purpose of this bill is to put in place a framework to encourage immigration under a well-established program that encourages the types of immigrants that we're seeking. But we should not be layering too much red tape onto that, more so than we need. We're already putting in place a regime that will allow for investigation and enforcement of compliance and that will well define the roles of different people who are actors within the immigration process. I think it's really unnecessary red tape to require the Lieutenant Governor in Council to establish a recruiter registry as well. I will be voting against this, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Further comments

on NDP motion 4?

Mr. Todd Smith: I would just like to say that it's music to my ears to see a member of the Liberal side talking about reducing red tape. I'm with you, Peter, all the way.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote.

Mr. Peter Z. Milczyn: Recorded.

Ayes

Armstrong.

Navs

Berardinetti, Crack, Lalonde, MacLaren, Milczyn, Naidoo-Harris, Smith.

The Chair (Mr. Shafiq Qaadri): NDP motion 4 falls. Shall section 6 carry? Carried.

We have not received any amendments to date on sections 7, 8, 9 and 10. Are there any comments on those sections? If not, I'll take them as a block.

Shall sections 7, 8, 9 and 10, inclusive, carry? Carried. Section 11, PC motion 5. Mr. Smith.

Mr. Todd Smith: I move that section 11 of the bill be amended by adding the following subsection:

"Temporary agricultural workers

"(2.1) If the minister establishes one or more selection programs under subsection (1), at least one of them shall deal specifically with temporary agricultural workers."

The Chair (Mr. Shafiq Qaadri): Comments on PC motion 5.

Mr. Todd Smith: We did have a couple of delegations from those in the mushroom sector specifically who would like to see something in the bill that would help them in their current employment crisis, as they call it. I did have the opportunity to have a briefing with ministry staff earlier this week, and we discussed some of the options that are available. But I know that those in the mushroom industry would enjoy the opportunity for us to have something in the bill that would address the crisis in their sector.

The Chair (Mr. Shafiq Qaadri): PC motion 5: comments?

Ms. Indira Naidoo-Harris: While I understand why MPP Smith may feel that this is an importation motion to be looking at, I have to point out that currently the agreement between the federal government and Ontario doesn't really allow Ontario to create a temporary agriculture stream. I don't think we in this province have the constitutional powers. These powers flow from the federal government and I think the federal government is paramount in this area.

The Chair (Mr. Shafiq Qaadri): Any further comments on PC motion 5?

Mr. Peter Z. Milczyn: I applaud the member for bringing this issue forward because there certainly is a great deal of merit to the need to ensure that our agricultural sector continues to have access to a workforce that helps them harvest and do all the things that they need to

do to bring their products to market. I would just encourage the members from the official opposition to lobby the federal government to do something in this regard and perhaps to amend agreements with the province of Ontario to give the province some authority to do this. As I think the official opposition well knows, the agreement that we have with the federal government does not allow for this particular issue. Although we now have developed a great partnership with the federal government around immigration, it continues to be a federal matter and the province cannot exceed whatever authority the feds have deemed to grant us. Certainly on this side we'd be happy to work towards this but we're not able to do so at this time.

0920

The Chair (Mr. Shafiq Qaadri): Thank you. PC motion 5, further comments? If not, we'll proceed to the recorded vote.

Aves

Armstrong, MacLaren, Smith.

Nays

Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): PC motion 5 falls. Shall section 11 carry? Carried.

Now to section 12, NDP motion 6. Ms. Armstrong.

Ms. Teresa J. Armstrong: I move that subsection 12(3) of the bill be struck out.

The Chair (Mr. Shafiq Qaadri): Comments? Ms. Naidoo-Harris?

Ms. Indira Naidoo-Harris: Once again, this is something that's really outside of the purview of Ontario. This is an area that the federal government has established federal jurisdiction over. When it comes to things, for example, like the federal Immigration and Refugee Protection Act or the PNP program in Ontario, the federal government has established that individuals must demonstrate an ability to come to Ontario and to be economically established and support themselves.

There really is no room at this point in time, unfortunately, for Ontario to have any room on this. It is a federal matter so I have to recommend voting against this.

The Chair (Mr. Shafiq Qaadri): NDP motion 6, further comments?

Mr. Peter Z. Milczyn: Mr. Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Milczyn?

Mr. Peter Z. Milczyn: I want to concur with my colleague that this is certainly something that we don't have the ability to do. There are certain requirements under federal legislation that have to be followed. But beyond that, really, why would we want to eliminate this kind of a requirement?

We do want to attract immigrants to this province, immigrants who will, as generations of immigrants before

them have, contribute greatly to the prosperity and vibrancy of Ontario. But why would we want to say, "You don't have to demonstrate that you're going to have some kind of economic connection and you don't have to demonstrate that you've secured some form of employment or some kind of economic opportunity here"?

Even if it were up to us, I would certainly be opposed to removing this kind of requirement. We want to make sure that people come to this province and have the ability to become contributing partners to our society. We want to provide them with tools to do that, but we also want to make sure that people who come here take advantage of the opportunities that are given to them.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms.

Naidoo-Harris?

Ms. Indira Naidoo-Harris: I would just echo the comments of my fellow member here. It's really about making sure that our newcomers who come to Ontario actually have the ability to be successful and are able to have that support. I recognize and agree with the comments.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments on NDP motion 6?

Ms. Teresa J. Armstrong: I'll restrain from my further comments. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Armstrong. We'll proceed to the recorded vote, Mr. Milczyn, I presume?

Mr. Peter Z. Milczyn: Yes.

Ayes

Armstrong.

Nays

Berardinetti, Crack, Lalonde, MacLaren, Milczyn, Naidoo-Harris, Smith.

The Chair (Mr. Shafiq Qaadri): NDP motion 6 falls. Shall section 12 carry? Carried.

No amendments so far received for section 13. Any comments on section 13? Seeing none, shall section 13 carry? Carried.

Section 14, government motion 7. Last call for government motion 7. Ms. Naidoo-Harris?

Ms. Indira Naidoo-Harris: Yes. I'm going to read it. I move that subsection 1.4(1) of the bill be struck out and the following substituted—

Interruption.

Ms. Indira Naidoo-Harris: Sorry, I'm just on the wrong page.

The Chair (Mr. Shafiq Qaadri): Government motion

Ms. Indira Naidoo-Harris: Page 7. Thank you. An Act with respect to immigration to Ontario and a related amendment to the—

The Chair (Mr. Shafiq Qaadri): No need for the title, Ms. Naidoo-Harris. Just get to the actual—

Ms. Indira Naidoo-Harris: Okay, sorry.

I move that subsection 14(1) of the bill be struck out and the following substituted:

"Authority for acting as a representative

"(1) No individual shall knowingly, directly or indirectly, act as a representative or offer to do so unless the individual is,

"(a) a person who is authorized under the Law Society Act to do so:

"(b) a member of a body designated by a regulation made under subsection 91(5) of the Immigration and Refugee Protection Act (Canada); or

"(c) any other individual prescribed by the minister."

The Chair (Mr. Shafiq Qaadri): Comments?

Ms. Indira Naidoo-Harris: I recommend voting for this motion because I think it would address the concerns expressed by the Law Society of Upper Canada and the Ontario Bar Association that the definition of "legal professions" under Bill 49 is broad and may go beyond the scope of the Law Society Act. This amendment clarifies that the Ontario Immigration Act is not intended to authorize the provision of legal services by anyone who is not otherwise permitted to do so under the Law Society Act.

I really think that it's important because the wording right now may go beyond the scope. This is an important motion.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 7? Mr. Smith and Mr. Milczyn.

Mr. Todd Smith: I would agree with the member opposite. We did hear clearly from the Ontario Bar Association and the Law Society of Upper Canada that this was something they would like to see. I believe Mr. Milczyn earlier was talking about some unscrupulous people who are out there in the community trying to take advantage of certain situations. The clearer that we can be in creating the legislation, with the help of the law society and the bar association, to make this the best legislation possible—I think we're headed in the right direction with this, so we'll be supporting this.

Mr. Peter Z. Milczyn: As my friend across mentioned, from my opening remarks, it is important that we have a regime in place that only those who are truly qualified to offer services and advice to those seeking entry into our province should be in a position to offer those services. I think it was an oversight in the drafting of the legislation. We made it too broad and a little bit unclear, so this is a very important amendment that we're introducing to protect future immigrants to this province.

The Chair (Mr. Shafiq Qaadri): Further comments before we proceed to the vote on government motion 7?

Mr. Peter Z. Milczyn: Recorded vote.

Ayes

Armstrong, Berardinetti, Crack, MacLaren, Lalonde, Milczyn, Naidoo-Harris, Smith.

The Chair (Mr. Shafiq Qaadri): None opposed. Government motion 7 carries.

Shall section 14, as amended, carry? Carried.

Section 15: no amendments received to date. Unless there's commentary, we'll proceed to the recorded vote.

Ayes

Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): Opposed? None. Section 15 carries.

Section 16: government motion 8.

Ms. Indira Naidoo-Harris: I move that subsection 16(4) of the bill be struck out and the following substituted:

"Director's discretion, not granting application

"(4) Even if the director determines that an applicant meets the prescribed criteria, the director may decide to refuse to grant the application if the director has reasonable grounds for so doing."

The Chair (Mr. Shafiq Qaadri): The floor is open for comments.

Mr. Peter Z. Milczyn: Again, through the hearing process, the law society had a number of comments and suggestions. I'm happy that the government did listen very carefully to those submissions. This represents another one of the amendments that is being brought forward in respect of the submissions we heard. There will be others as well.

It's very important to note that, while there is a need to have checks and balances in the system for senior public servants to be able to assess applications that come forward and be able to determine whether they are compliant with the intent of the program as well as the law, they cannot be arbitrary and they will be subject, potentially, to judicial review.

So it's not a blanket authority that is done in some distant star chamber. There would have to be good reasons for doing it. Those reasons could be challenged, examined in court if need be. I think that this is a good amendment that we should all be supporting.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Milczyn. Ms. Naidoo-Harris?

Ms. Indira Naidoo-Harris: I really think that it's important that this bill not authorize arbitrary decisions. This really ensures that program staff have the authority to deny an application, but where there are grounds to do so. I think this is a very important piece to be inserting.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. Further comments on government motion 8? If not, we'll proceed to the vote. Recorded vote.

Ayes

Armstrong, Berardinetti, Crack, Lalonde, MacLaren, Milczyn, Naidoo-Harris, Smith.

The Chair (Mr. Shafiq Qaadri): None opposed. Shall section 16, as amended, carry?

The Clerk of the Committee (Ms. Tonia Grannum): Did you carry the amendment?

The Chair (Mr. Shafiq Qaadri): Yes, the amendment is carried. Shall section 16, as amended, carry? Carried.

No amendments received so far for sections 17 and 18. Any comments on those sections before we proceed to a recorded vote?

Seeing none, recorded vote: Shall sections 17 and 18 carry?

Ayes

Armstrong, Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): Sections 17 and 18 carry.

Section 19, NDP motion 9: Ms. Armstrong.

Ms. Teresa J. Armstrong: I move that subsection 19(5) of the bill be amended by striking out "and that is not a foreign national".

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? Any comments on NDP motion 9?

Ms. Teresa J. Armstrong: This language would allow some of the bigger international recruiters—they won't be held accountable if this language remains, so we're asking for that to be struck out.

The Chair (Mr. Shafiq Qaadri): Thank you. Any comments on NDP motion 9? Before we proceed to that, we'd like to assure the government House leader that everything is in order but we thank her for her intervention. NDP motion 9: Comments? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I think this is an important motion because it makes it clear that we could publish the names of a recruiter or representative who is a foreign national. So in some ways, it provides strong incentives for compliance. It introduces the idea of naming and shaming. I think this is necessary, and I will be supporting this motion.

The Chair (Mr. Shafiq Qaadri): Mr. Milczyn.

Mr. Peter Z. Milczyn: To sort of continue on the theme that I started at the outset, I do congratulate the NDP on this motion. I will be supporting this amendment. Especially those who are overseas, who are beyond the reach of our laws, our courts, and who prey on immigrants or prospective immigrants—sometimes vulnerable people—and who promise them easy entry into the country, jobs and all manner of things, take their money and then leave people in extremely precarious situations when they arrive here, either without the approvals in place that they thought they were going to get, or certainly, at a minimum, having taken a great deal of money from them—this is extremely important, that if somebody is beyond the reach of our courts and our laws, at least we would have the ability to say that that person is not operating according to the rules and is not actually offering the services and benefits that they purport to. At the very least, foreign media perhaps would carry this

and make those persons known and prevent them from targeting other victims.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Milczyn. Any comments on NDP motion 9? Mr. Smith.

Mr. Todd Smith: I would just agree that people who intentionally break our laws shouldn't have their names protected by disclosure. I'm so surprised that a former member of the media would want to name and shame anyone, though.

We're with you on this one, too.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Smith.

Those in favour of NDP motion 9?

Mr. Peter Z. Milczyn: Recorded vote.

The Chair (Mr. Shafiq Qaadri): Recorded vote.

Ayes

Armstrong, Berardinetti, Crack, Lalonde, MacLaren, Milczyn, Naidoo-Harris, Smith.

The Chair (Mr. Shafiq Qaadri): Thank you. None opposed. NDP motion 9 carries.

Shall section 19, as amended, carry? Carried. Thank

Section 20: no amendments received.

Any comments before proceeding to the recorded vote?

Shall section 20 carry?

Ayes

Armstrong, Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): Section 20 carries. Section 21, NDP motion 10: Ms. Armstrong.

Ms. Teresa J. Armstrong: I move that subsection 21(3) of the bill is amended by adding the following paragraph:

"2.1 Another ministry or agency of the government of

Ontario.'

The Chair (Mr. Shafiq Qaadri): Comments? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I have to say that I think this motion is redundant. I think it's already carried in another area of the act. I believe it's covered by paragraph 21(3)3 of the Ontario Immigration Act. That paragraph already authorizes the minister to enter into arrangements or agreements with other institutions as defined, of course, by FIPPA. So I really find this particular motion to be redundant.

The Chair (Mr. Shafiq Qaadri): Further comments on NDP motion 10? Ms. Armstrong.

Ms. Teresa J. Armstrong: Just to add to that, I think putting it in there is important. It actually spurs an obligation for the MIIT to coordinate and work with the Minister of Labour. That's our intent of that motion.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Recorded vote, NDP motion 10.

Ayes

Armstrong, MacLaren, Smith.

Nays

Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): NDP motion 10 falls

Shall section 21 carry? Recorded vote on that.

Aves

Armstrong, Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

Ms. Teresa J. Armstrong: Did you say "in favour" or "opposed"?

The Chair (Mr. Shafiq Qaadri): Let's try it again. Section 21: Those in favour? Recorded vote.

Ayes

Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): Any opposed? None. Section 21 carries.

We now proceed to section 22, NDP motion 11.

Ms. Teresa J. Armstrong: I move that subsection 22(1) of the bill be struck out and the following substituted:

"Inspectors and investigators

"22(1) The minister may appoint any individual as an inspector or an investigator, and may designate him or her as a provincial offences officer under the Provincial Offences Act."

The Chair (Mr. Shafiq Qaadri): Comments? Ms. Naidoo-Harris and then Mr. Milczyn.

Ms. Indira Naidoo-Harris: Again, I feel that this is redundant. Though it isn't explicitly mentioned in the Ontario Immigration Act, this amendment really would duplicate authorities that I think the minister already has. I think subsection 1(3) of that act gives any minister of the crown, under the Provincial Offences Act, the authority to designate persons as provincial offences officers. So I'm really not clear on why we need this motion if the minister already has those authorities—an ability to do this and assign someone as a provincial offences officer under the Provincial Offences Act.

The Chair (Mr. Shafiq Qaadri): Mr. Milczyn. The floor is open after that.

Mr. Smith, go ahead, please.

Mr. Todd Smith: We believe that we already have enough immigration bureaucracy existing now, and

there's no real necessity to add to it. The majority of the immigration offences are actually handled by the federal government. We're a little less concerned about adding another bureaucracy, and more concerned about the powers that maybe those officers have. So we'll be going against this.

The Chair (Mr. Shafiq Qaadri): Mr. Milczyn.

Mr. Peter Z. Milczyn: Yes, and to echo Mr. Smith's remarks, the bulk of enforcement activities around immigration matters will ultimately be handled by the federal government. Ministers have broad authority already to appoint provincial offences officers for those areas that fall under individual ministries, and this really is redundant, but if misapplied could result in the creation of some new bureaucracy that really wasn't intended by this legislation.

0940

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments on NDP motion 11? Ms. Armstrong?

Ms. Teresa J. Armstrong: The motion presented here is basically to create it so that inspectors have the same powers under the Ministry of Labour as health and safety inspectors do under the Ministry of Labour. That's the purpose of the motion here today.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll proceed now to the recorded vote on NDP motion 11.

Aves

Armstrong.

Nays

Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris, Smith.

The Chair (Mr. Shafiq Qaadri): NDP motion 11 carries. We will now vote on the-

Interjections.

The Chair (Mr. Shafiq Qaadri): Sorry, NDP motion

We'll now proceed to carry the section. It's a recorded vote. Shall section 22 carry?

Ayes

Armstrong, Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): Section 22 carries. We'll now proceed to section 23, PC motion 12. Mr. Smith?

Mr. Jack MacLaren: Can I speak to that one?

The Chair (Mr. Shafiq Qaadri): Sorry, Mr. Mac-

Mr. Todd Smith: I'll read it in, actually, and then Mr. MacLaren has some comments.

I move that subsection 23(2) of the bill be amended by striking out "except any premises or part of any premises

that is used as a dwelling" and substituting "except any premises or part of any premises that is used as a dwelling or used as the office of a person licensed under the Law Society Act to practise law in Ontario as a barrister and solicitor".

The Chair (Mr. Shafiq Qaadri): Mr. MacLaren?

Mr. Jack MacLaren: I would say warrantless entry is never something that should be permitted in this country under any circumstance. A warrant can be obtained to enter, if there is good reason, from a justice of the peace. Therefore, I believe this is a fundamental affront to private property rights, and we are opposed to that.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms.

Naidoo-Harris?

Ms. Indira Naidoo-Harris: While I agree with the members opposite that we have to be very careful about warrantless searches, I do feel that the government is proposing a motion that would achieve the same result and, we feel, that pays particular attention to some other concerns that were raised by the Ontario Bar Association and the Law Society of Upper Canada. There is a motion that we have proposed that I think covers your concerns on the opposite side and takes care of the scope in a real way.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments on PC motion 12? Mr. Milczyn?

Mr. Peter Z. Milczyn: Throughout the hearing process, there were a number of very good submissions by the law society. The government side did listen carefully to them, as my colleague just mentioned. The government did craft an amendment to the legislation that will address the law society's concerns about warrantless searches of lawyers' offices and how that might impinge on solicitor-client privilege. That amendment was carefully crafted in consultation with the law society, so we're confident that that will achieve the right result and be accepted by the law society.

The Chair (Mr. Shafiq Qaadri): Further comments on PC motion 12? Seeing none, we shall proceed to the

recorded vote.

Ayes

Armstrong, MacLaren, Smith.

Navs

Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): PC motion 12 falls. NDP motion 13, Ms. Armstrong.

Ms. Teresa J. Armstrong: I move that paragraph 1 of subsection 23(2) of the bill be amended by striking out "if such a registry has been established".

The Chair (Mr. Shafiq Qaadri): Thank you.

Comments? Any comments? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Once again, I feel that this motion would allow for warrantless searches. It's redundant, because the objective is already covered, I

think, in paragraph 2 of the same subsection. Paragraph 2 does give inspectors the authority to conduct warrantless searches of employers that have been granted an approval. I'm not really sure why we're moving forward with this, why we're proposing this motion. I would be voting against it.

The Chair (Mr. Shafiq Qaadri): Thank you. Further

comments on NDP motion 13? Mr. Milczyn.

Mr. Peter Z. Milczyn: We already struck down the amendment around the employer registry, so that makes this particular motion redundant. There are other provisions in the bill that would allow for searches for enforcement and investigation purposes, and so we'll be voting against this particular amendment.

The Chair (Mr. Shafiq Qaadri): Further comments on NDP motion 13? If none, we'll proceed to the

recorded vote.

Ayes

Armstrong.

Nays

Berardinetti, Crack, Lalonde, MacLaren, Milczyn, Naidoo-Harris, Smith.

The Chair (Mr. Shafiq Qaadri): NDP motion 13 falls.

NDP motion 14: Ms. Armstrong.

Ms. Teresa J. Armstrong: I move that paragraph 3 of subsection 23(2) of the bill be amended by striking out "if a recruiter registry has been established".

The Chair (Mr. Shafiq Qaadri): Mr. Milczyn.

Mr. Peter Z. Milczyn: We will be voting against this particular amendment. Registries are fine, but without proper enforcement tools, it really would not achieve any result. We don't see the value in this. The enforcement mechanisms are being put in place, and the compliance mechanisms are already in here. Once those tools are implemented, if there are any gaps, they can be addressed in the future. But again, we should not be trying to layer on too much at the front end and creating potential abuse of the ability to access premises or create additional bureaucracy to enforce this.

The Chair (Mr. Shafiq Qaadri): Further comments on NDP motion 14?

Ms. Indira Naidoo-Harris: I would agree with my colleague that, really, regulatory tools do not replace the need for enforcement. It is important that we have these tools, and we do have tools in place already. We have strong compliance mechanisms already. I don't see the need for this either.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote.

Ayes

Armstrong.

Nays

Berardinetti, Crack, Lalonde, MacLaren, Milczyn, Naidoo-Harris, Smith.

The Chair (Mr. Shafiq Qaadri): NDP motion 14 falls.

Government motion 15: Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I move that paragraph 4 of subsection 23(2) of the bill be struck.

The Chair (Mr. Shafiq Qaadri): "Struck out," as opposed to just physically hit.

Any comments? Mr. Milczyn.

Mr. Peter Z. Milczyn: As I mentioned earlier, through the hearing process, we did hear clearly the concerns stated by the Law Society of Upper Canada and the bar association. We've crafted a number of amendments to address their concerns. Certainly, there never would have been any intention in any way to impinge upon solicitor-client privilege.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 15, if any? If not, we'll proceed to

the recorded vote.

Ayes

Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): Those opposed? Government motion 15 carries.

PC motion 16: Mr. Smith.

Mr. Todd Smith: I move that section 23 of the bill be struck out and the following substituted:

"No inspection without warrant

"23. No inspection shall be conducted for the purpose of ensuring compliance with this act and the regulations unless a warrant has been issued under section 24."

The Chair (Mr. Shafiq Qaadri): Comments?

Mr. Jack MacLaren: Well, again, this is the fundamental principle that warrantless entry should never be permitted in this country, I would say, because we have the ability to get warrants when something wrong is happening, or we suspect is being done. If a justice of the peace issues the warrant, the job gets done. So we should be opposed to warrantless entry, period.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments on PC motion 16? Mr. Milczyn.

Mr. Peter Z. Milczyn: We won't be supporting this amendment. This would take away all authority to conduct compliance inspections. Really, to take it to the extreme that—my friend across the way said that in this country, there should never be any warrantless inspections. Just think of the implications of that in all manner of things, let alone immigration. Whether it's inspecting a fence dispute or construction without a building permit or anything else, if the new standard that was set for all legislation, including immigration legislation, was that you must first go to a justice of the peace and get a

warrant, then all manner of inspection and enforcement, I dare say, would grind to a halt.

If there is abuse, abuse can certainly be dealt with through the courts or even through changes of legislation in the future. I don't suspect that there would be any abuse of these measures. If an inspector were to go to a place of employment to see if a person who was granted immigration to Canada and to Ontario under this program in fact was employed there—I don't see what harm or bias to somebody's constitutional rights would be inflicted upon them by somebody coming into a place of work and seeing whether somebody actually works there, no more so than the quality of handling of meat in a meat processing facility, or a construction site to see whether there is a building permit in place, and so on and so forth.

Many of the things the opposition has said today I think we're in agreement on, but this is an overly libertarian interpretation of how enforcement procedures should be handled, certainly for this act. I would be very troubled if this were the direction that the opposition wanted the government to go in on all manner of inspection and enforcement.

The Chair (Mr. Shafiq Qaadri): Mr. MacLaren.

Mr. Jack MacLaren: Well, in fact, it is an affront to our constitutional rights to do an unreasonable search. If, in a law, we put the opportunity for an inspector to come onto a property without warrant, you provide the opportunity for unreasonable behaviour to happen, and we have to guard very carefully against that because those things do happen. What we have to do here is be very careful and not provide opportunity for the abuse of people's constitutional rights and privacy on their property of their persons and their businesses.

A building permit is a different thing. When a person buys a building permit, by buying the building permit, they're giving permission to the inspector to come to inspect the building. In a slaughterhouse, where there's meat inspected—and I am a farmer, so I'm aware of this—the law states that for that business, because it's in business, one of the conditions of being in business is that there will be inspections for food safety. I am in favour of those things. What we're doing here is an open book that invites abuse, and we cannot do this. So I am totally opposed to warrantless entry and always will be.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. MacLaren. Ms. Naidoo-Harris, you wanted the floor?

Ms. Indira Naidoo-Harris: I just think the authority to conduct compliance inspections without a warrant is really important. It really protects the integrity of the Ontario immigration programs. That authority to conduct these searches is key to ensuring that inspectors can really make sure that compliance is occurring, so that access is part of ensuring that we're protecting our programs.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments to PC motion 16? Ms. Armstrong.

Ms. Teresa J. Armstrong: As a province, we are opening doors for immigrants to come to our province, work here and make a life here. Our intent with some of

the other motions previously was to give inspectors the same powers as the Ministry of Labour, under health and safety.

As well as this particular motion—I'll be opposing the PC motion. It's the same realm of powers that we're giving the Ministry of Labour. When there's a workplace, they should be treated the same under the health and safety act, as well as on the premise of going to inspect. I'll be opposing the motion but I think it should have been, from the previous motion that I presented, a little broader in that they should also have the health and safety inspection powers.

The Chair (Mr. Shafiq Qaadri): Further comments?

Ms. Indira Naidoo-Harris: I want to make sure that the members opposite really do understand. I understand your concerns and I realize why you may be raising some issues and feeling that we need to discuss this. But at the same time, this particular piece was okayed by the Attorney General and also supported by constitutional law, so I feel that it does take care of those protections. There are things in place that will ensure that there isn't abuse of these powers.

The Chair (Mr. Shafiq Qaadri): Mr. Milczyn?

Mr. Peter Z. Milczyn: I appreciate the comments from the members opposite about how people engage in certain types of businesses or activities. As part of engaging in that, they acknowledge that there is an inspection and compliance regime. I would suggest to the official opposition that this is no different than somebody who comes to Ontario as an immigrant. An employer who accepts that person as an immigrant—they then, by doing that, give some form of approval that there will be compliance, there will potentially be inspection and certainly there would be enforcement if there were violations.

I don't think it's overly intrusive, as Ms. Armstrong said, for an inspector to enter any place of employment to inspect any number of things that may be mandated under the Ministry of Labour, occupational health and safety or, in fact, whether somebody is working legally in this province. I think there is a tacit acceptance of somebody coming in under this program understanding that there might be some review of whether they're actually complying with the terms of their admission.

The Chair (Mr. Shafiq Qaadri): Mr. MacLaren?

Mr. Jack MacLaren: What I would say is that all we're asking for is the same rules that our police have today, where they cannot go on to private property without the permission of the owner or a warrant from a justice of the peace. If they have good reason to want to go on that property and the justice of the peace agrees, they will get there.

To create through law and give authority to an inspector who does not have the qualifications or the training of a policeman to do something that a policeman can't do is absolutely wrong. I will close with that.

The Chair (Mr. Shafiq Qaadri): Further comments on PC motion 16? Seeing none, we'll proceed to the vote. Recorded.

Ayes

MacLaren, Smith.

Navs

Armstrong, Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): PC motion 16 falls. Thank you, Mr. MacLaren, for your prompting.

Shall section 23, as amended, carry? A recorded vote for section 23, as amended.

Ayes

Armstrong, Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

Nays

MacLaren.

The Chair (Mr. Shafiq Qaadri): Section 23, as amended, carries.

We now move to section 24, government motion 17. Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I move that section 24 of the bill be amended by adding the following subsections:

"Where solicitor-client privilege

"(1.1) A warrant issued under subsection (1) may authorize an investigator to examine and seize anything described in the warrant that is subject to any privilege that may exist between a solicitor and the solicitor's client only if the authorization is necessary to obtain otherwise unavailable evidence of a contravention of this act.

"Same

"(1.2) A warrant that authorizes an investigator to act as described in subsection (1.1) shall contain the conditions that the justice of the peace issuing the warrant considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances."

The Chair (Mr. Shafiq Qaadri): Thank you. Government motion 17: Any comments?

Ms. Indira Naidoo-Harris: I think this is important, because it was never the intention in the Ontario Immigration Act to give investigators access to documents that were really protected by solicitor-client privilege. This speaks to some of the comments that were brought up by the PC members. This amendment would address the concerns, expressed by the Law Society of Upper Canada and the Ontario Bar Association, that the authority to conduct investigations under the OIA may have been too broad

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Milczyn?

Mr. Peter Z. Milczyn: Again, Mr. Chair, through the hearing process, we heard submissions from the Law

Society of Upper Canada and the Ontario Bar Association. The government took those very seriously and has crafted a number of amendments to the bill to address the concerns that were raised.

Further to the conversation that we had on the previous section, there will certainly be a number of cases in which a warrant is required for an inspector or enforcement official to gain entry to get records. When that is required, it will be done under the current rules and the high bars that are set to secure a warrant from a justice of the peace.

In this particular case, I imagine there would be a very high bar that would be required to convince a justice of the peace to allow enforcement activity that might secure some record that otherwise might be considered to be subject to solicitor-client privilege.

I think we're trying to address the concerns of the Law Society of Upper Canada in a responsible manner and ensure that, in fact, there would be due process in order for certain types of inspection activities to be able to take place.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 17?

Mr. Todd Smith: We congratulate the government for listening to the Law Society of Upper Canada and the Ontario Bar Association during the committee hearings as well.

This amendment still doesn't quite do enough to protect law offices, though, so we'll be adding another bit in one of the amendments that we're putting forward right after this one.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 17? If not, we'll proceed to the recorded vote.

Ayes

Armstrong, Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): Government motion 17 carries.

PC motion 18.

Mr. Todd Smith: I move that section 24 of the bill be amended by adding the following subsection:

"Entry of law office

"(3.1) An investigator shall not exercise the power under a warrant to enter a place, or part of a place, that is used as the office of a person licensed under the Law Society Act to practise law in Ontario as a barrister and solicitor, unless the power is exercised in accordance with,

"(a) the document entitled 'Guidelines for Law Office Searches' available on the public website of the Law Society of Upper Canada; and

"(b) the criteria set out by the Supreme Court of Canada in Lavallee, Rackel & Heintz v. Canada (Attorney General), 2002."

That is the end of the amendment.

The Chair (Mr. Shafiq Qaadri): Comments on PC motion 18?

Mr. Todd Smith: As we heard in committee from the Law Society of Upper Canada and the Ontario Bar Association, legal experts have informed us about the potential problems and ramifications of the current bill, pertaining to solicitor-client privilege. We should let expert opinion define the specifics of this bill, not ideology. If we want high-quality legal professionals to remain active in immigration law, we need to put the proper protections in place for them.

Solicitor-client privilege's importance has been maintained by the Supreme Court of Canada on numerous occasions, and there's no reason that this legislation should not follow the precedents that have been set.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. Naidoo-Harris?

Ms. Indira Naidoo-Harris: While I understand the concerns that the member opposite has with the solicitor-client privilege and preserving that, we also are proposing amendments that are similar to this motion and the policy intent behind this motion. We feel that the one we will be proposing more appropriately addresses the concerns raised by the Ontario Bar Association and the Law Society of Upper Canada.

The government's motion, if adopted, would just clarify the solicitor-client privilege and would prevail during an investigation under the Ontario Immigration Act. I think it will carry the spirit of what the member opposite is suggesting, but takes it a little further.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments on PC motion 18? Mr. Milczyn.

Mr. Peter Z. Milczyn: To echo my colleague's comments, the previous amendment that was voted upon and adopted and the subsequent amendment that is yet to be discussed in combination, I believe, will address the concerns of the Law Society of Upper Canada and the bar association, and I think are within the same spirit and intent of the PC motions. I hope that in the spirit of cooperation we could get your support on the government amendments.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments on PC motion 18 before we proceed to the vote? Seeing none, recorded vote.

Ayes

Armstrong, MacLaren, Smith.

Navs

Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): PC motion 18 falls. We'll now move to consideration of section 24, as amended.

Aves

Armstrong, Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): None opposed. Section 24, as amended, carries.

Section 25, government motion 19.

Ms. Indira Naidoo-Harris: I move that section 25 of the bill be amended by adding the following subsection:

"Exception: solicitor-client privilege

"(2) Nothing in this section abrogates any privilege that may exist between a solicitor and the solicitor's client."

The Chair (Mr. Shafiq Qaadri): Thank you. Comments?

Ms. Indira Naidoo-Harris: I really feel that this would address the concerns that we've been hearing about today and also raised by the Ontario Bar Association and the Law Society of Upper Canada. These provisions could result in an intrusion of the solicitor-client privilege, so I think this amendment would actually clarify that nothing in this section is intended to take away from that very important privilege and does it in a way that is really taking everything into account.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Milczyn?

Mr. Peter Z. Milczyn: Yes, just to echo my colleague's comments, having closely listened to the submissions of the law society and the bar association, the government has proposed a series of motions that will address those concerns, this being a very clear statement that there is nothing within the act that in any way would intend to undermine the principle of solicitor-client privilege. Any dispute about any documents around solicitor-client privilege would strictly be a matter for the courts to determine. It certainly would not be something that, through any enforcement activities of ours, we would try to impinge upon.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Milczyn. Are there any further comments on government motion 19? If not, we'll proceed to the vote.

Ayes

Armstrong, Berardinetti, Crack, Lalonde, MacLaren, Milczyn, Naidoo-Harris, Smith.

The Chair (Mr. Shafiq Qaadri): None opposed. Government motion 19 carries.

Recorded vote: Shall section 25, as amended, carry?

Ayes

Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): Section 25, as amended, carries.

Section 25.1, PC motion 20. Mr. Smith.

Mr. Todd Smith: I move that the bill be amended by adding the following section:

"Privilege preserved

"(25.1) Nothing in this act requires the disclosure of information that is subject to solicitor-client privilege, litigation privilege or settlement privilege."

The Chair (Mr. Shafiq Qaadri): Thank you. Are there any comments or shall we proceed to the vote?

Mr. Todd Smith: Just that the Ontario Bar Association supported this wording and we wanted to get this—

The Chair (Mr. Shafiq Qaadri): Mr. Milczyn.

Mr. Peter Z. Milczyn: Thank you, Mr. Chair. I think the previous amendment addressed this issue and we made it very clear that nothing in this legislation will impinge on solicitor-client privilege. I think that amendment was sufficient. This one is redundant and we will not be supporting it.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments? Seeing none, we'll proceed to the vote.

Aves

Armstrong, MacLaren, Smith.

Nays

Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): PC motion 20 itself falls.

We'll now proceed to section 26, government motion 21.

1010

Ms. Indira Naidoo-Harris: I move that subsections 26(8) and (9) of the bill be struck out and the following substituted:

"No effect on offences

"(8) For greater certainty, nothing in this section affects the prosecution of an offence."

The Chair (Mr. Shafiq Qaadri): Thank you. Mr.

Milczyn?

Mr. Peter Z. Milczyn: Again, having listened carefully to submissions from the law society and the bar association, this will create strict liability, which means that any legal professional that exercised appropriate due diligence would not be subject to prosecution for an offence if they appear to have done their job properly.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Milczyn. Comments on government motion 21? If none,

we'll proceed to the recorded vote.

Ayes

Armstrong, Berardinetti, Crack, Lalonde, MacLaren, Milczyn, Naidoo-Harris, Smith.

The Chair (Mr. Shafiq Qaadri): Government motion 21 carries.

PC motion 22: Mr. Smith.

Mr. Todd Smith: I move that subsection 26(8) of bill be struck out.

The Chair (Mr. Shafiq Qaadri): Comments? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I just feel the government motion on this is more complete. I think that we're proposing an amendment that aligns with the policy intent.

The Chair (Mr. Shafiq Qaadri): Thank you. Any further comments on PC motion 22? We'll proceed then

to the recorded vote.

Aves

Armstrong, MacLaren, Smith.

Nays

Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): PC motion 22 itself falls.

Shall section 26, as amended, carry? Recorded vote.

Ayes

Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): Section 26, as amended, carries.

No motions—amendments—have been received so far for sections 27 and 28. Comments on them? If not, we'll proceed to the recorded vote. Shall sections 27 and 28 carry?

Ayes

Armstrong, Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): Carried. Sections 27 and 28 carry.

Section 29: NDP motion 23.

Ms. Teresa J. Armstrong: I move that subsection 29(1) be struck out and the following substituted:

"Offences

"29(1) A person or body is guilty of an offence if the person or body fails to comply with subsection 5(2), 6(2), 7(2) or 14(1), section 15, subsection 17(2) or a requirement or prohibition in the regulations."

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments on the NDP motion? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I think this is a really important motion because it addresses the issue of employers who may violate the Ontario Immigration Act. It protects the integrity of Ontario's selection programs and it ensures that if a registry is created, unregistered employers who participate may be found guilty of an offence. I think this is a very important motion and I plan to support it.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments on NDP motion 23? Seeing none, I'll proceed

to the recorded vote.

Ayes

Armstrong, Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): NDP motion 23 carries.

We'll proceed to the vote on the section. Shall section 29, as amended, carry? Recorded vote.

Ayes

Armstrong, Berardinetti, Crack, Lalonde, Milczyn, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): Section 29, as amended, carries.

We have four sections which have not received any amendments. We'll consider them—

Mr. Peter Z. Milczyn: Mr. Chair?

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Peter Z. Milczyn: A point of order: It being now 10:15, I would move that we recess until this afternoon.

The Chair (Mr. Shafiq Qaadri): I had a minute left, but fair enough. We can do four sections. There are no motions on them, but as you like. Mr. Milczyn, if you're feeling rushed we shall recess until this afternoon. We are recessed until 2 p.m.

The committee recessed from 1015 to 1401.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We resume clause-by-clause hearing on Bill 49, An Act with respect to immigration to Ontario and a related amendment to the Regulated Health Professions Act, 1991.

Resuming from where we left off in the a.m., we have before us sections 30 to 33 inclusive. We have no amendments received to date. Are there any comments to be received on these sections? Going once—any comments to be received on these sections?

Mrs. Cristina Martins: Can you just clarify, Chair? I'm sorry; we're talking about which ones?

The Chair (Mr. Shafiq Qaadri): Sections 30, 31, 32 and 33. There are no amendments, so I'm going to consider a block vote on them.

Mrs. Cristina Martins: What about motion 24?

Interjection: That's different; that's section 33.

The Chair (Mr. Shafiq Qaadri): That's afterwards. Section 33.1 is usually after 33.

Interjections.

The Chair (Mr. Shafiq Qaadri): We are now on sections 30, 31, 32 and 33. Are there any comments to be made on these sections? Mr. Milczyn.

Mr. Peter Z. Milczyn: Mr. Chair, I do see an NDP motion on 33.1.

The Chair (Mr. Shafiq Qaadri): I congratulate you on that. We are currently on sections 30, 31, 32 and 33.

Mr. Peter Z. Milczyn: I apologize, Mr. Chair. So if there's an amendment to 33.1, section 33 is separate?

The Chair (Mr. Shafiq Qaadri): It's separate, yes. It's adding a section, yes.

The Clerk of the Committee (Ms. Tonia Grannum): It goes after 33.

Interjections.

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Potts.

Mr. Arthur Potts: It's my understanding—I wasn't here this morning—that we had left at 29. Are you mentioning section 30 here, or was that dealt with?

The Chair (Mr. Shafiq Qaadri): Section 29 has been dispensed with.

Mr. Arthur Potts: So we're starting with 30 now?

The Chair (Mr. Shafiq Qaadri): That's what you do when you've dispensed with 29.

Mr. Arthur Potts: All right, thank you. Mrs. Cristina Martins: So 30, 31 and 32.

Interjection: And 33.

The Chair (Mr. Shafiq Qaadri): I will provide this in writing if required, but I will try it verbally one more time: thirty, trente; thirty-one, trente et un; thirty-two, trente-deux; and thirty-three, trente-trois. Dans les deux langues officielles. Got it? Four sections, inclusive.

Une voix: C'est merveilleux.

The Chair (Mr. Shafiq Qaadri): Merci. Okay, are there any comments to be received on those sections inclusive? Mrs. Martins? En espagnol? No?

Mrs. Cristina Martins: No.

The Chair (Mr. Shafiq Qaadri): All right. Fair enough. We'll proceed to the recorded vote. Those in favour of, on block, sections 30, 31, 32 and 33?

Ayes

Armstrong, Malhi, Martins, Milczyn, Naidoo-Harris, Potts.

The Chair (Mr. Shafiq Qaadri): Those opposed? None. Those sections do carry, then.

We will now move to a new section to be added, section 33.1. NDP motion 24: Ms. Armstrong.

Ms. Teresa J. Armstrong: I move that the bill be amended by adding the following section:

"Joint and several liability

"33.1 An employer and a recruiter may be jointly and severally liable for an offence under this act and for any compensation or restitution ordered under section 33."

The Chair (Mr. Shafiq Qaadri): Comments? The floor is open. Ms. Armstrong? Anyone?

Mrs. Cristina Martins: If I may Mr. Chair, while the policy intent behind this motion is laudable, it is actually impossible to implement in practice. The motion would actually add a provision to change the nature of the liability for employers or recruiters such that employers or recruiters could be held jointly and severally liable for an offence, as well as any restitution or compensation ordered by a judge.

The Chair (Mr. Shafiq Qaadri): Just out of curiosity—I don't know if it's legislative research—what do the word "savarelly lights" research

the words "severally liable" mean, even?

Mr. Michael Wood: "Severally" would mean individually as opposed to jointly, which means all together.

The Chair (Mr. Shafiq Qaadri): Fair enough.

Any other further comments on NDP motion 24? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 24.

Ayes

Armstrong, MacLaren, Smith.

Nays

Malhi, Martins, Milczyn, Naidoo-Harris, Potts.

The Chair (Mr. Shafiq Qaadri): NDP motion 24 is defeated. Section 33.1 is nullified.

We move now to section 34, government motion 25. Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I move that section 34 of the bill be amended by adding the following subsection:

"No hearing required

"(8.1) Subject to the regulations made by the minister, the individual conducting an internal review is not required to hold a hearing or to afford the requester an opportunity for a hearing before exercising any powers under subsection (9)."

The Chair (Mr. Shafiq Qaadri): Comments? Comments of any kind?

Mr. Jack MacLaren: I get the impression that this is the elimination of an appeal process, and fundamentally I don't think we should be making judgements or issuing penalties and not have an appeal process. Therefore, I'm opposed. I think this is very wrong.

The Chair (Mr. Shafiq Qaadri): Thank you. Any further comments, rebuttal, questions?

Mrs. Cristina Martins: Can I just comment on the motion that was introduced by Ms. Naidoo-Harris? I'd just comment that this motion would actually bring consistency between the provision and other sections of the act that explicitly state that there is no obligation to hold a hearing and that it will not affect the existing procedural fairness requirements under the Ontario Immigration Act, the Judicial Review Procedure Act and common law.

The Chair (Mr. Shafiq Qaadri): Any comments before the vote on government motion 25? Seeing none, we will now proceed to the vote. Those in favour?

Ayes

Armstrong, Malhi, Martins, Milczyn, Naidoo-Harris, Potts.

Nays

MacLaren, Smith.

The Chair (Mr. Shafiq Qaadri): Government motion 25 carries.

Shall section 34, as amended, carry? Recorded vote. *Interjection*.

The Chair (Mr. Shafiq Qaadri): Mr. Milczyn, I'd appreciate if you would allow Ms. Malhi to make up her own mind which way she's going to vote. Thank you.

Ayes

Armstrong, Malhi, Martins, Milczyn, Naidoo-Harris, Potts.

The Chair (Mr. Shafiq Qaadri): Section 34, as amended, carries.

We've received no motions or amendments to date on section 35. Are there any comments to be had on section 35? Seeing none, we'll proceed then to the recorded vote.

Ayes

Armstrong, Malhi, Martins, Milczyn, Naidoo-Harris, Potts.

The Chair (Mr. Shafiq Qaadri): Section 35 has carried.

We'll now move to section 36, government motion 26. Ms. Naidoo-Harris.

1410

Ms. Indira Naidoo-Harris: Chair, if you don't mind, I'm going to pass it on to MPP Martins, and she will lead.

The Chair (Mr. Shafiq Qaadri): Ms. Martins.

Mrs. Cristina Martins: I move that section 36 of the bill be amended by adding the following clause:

"(e) respecting any matters that may be delegated by the Lieutenant Governor in Council under clause 37(1)(g.1)."

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Martins, and on the day of the passage of your bill, I also say "muchas gracias."

Are there any further comments on government motion 26?

Mr. Todd Smith: We were discussing this earlier. I'm just wondering why the government has put this amendment in. Is there a reason why? Can you enlighten up as to why this amendment is necessary?

Ms. Indira Naidoo-Harris: I'm happy to comment, MPP Smith. There are times, when it comes to programs' selection and eligibility criteria and so on, when things may be subject to change in terms of labour market needs and that sort of thing. This will allow the minister a little bit of leeway in order to chime in and basically set things, if necessary. It was felt that the minister would need a little bit of authority here to act more quickly, depending on market needs and so on.

Mr. Todd Smith: Okay.

The Chair (Mr. Shafiq Qaadri): Any further comments on government motion 26?

Seeing none, we'll proceed to the vote.

Ayes

Armstrong, Malhi, Martins, Milczyn, Naidoo-Harris, Potts.

Nays

MacLaren, Smith.

The Chair (Mr. Shafiq Qaadri): Government motion 26 carries.

Government motion 27: Ms. Martins.

Mrs. Cristina Martins: I move that section 36 of the bill be amended by adding the following subsection:

"Conflicts

"(2) If there is a conflict between a regulation made under clause (1)(e) and a regulation made by the Lieutenant Governor in Council under subclause 37(1)(e)(ii), the latter prevails."

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 27? Any comments? Mr. MacLaren.

Mr. Jack MacLaren: Could somebody explain more specifically what that means?

The Chair (Mr. Shafiq Qaadri): Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Essentially, combined with the previous amendment, this would allow certain selection programs eligibility criteria that may be subject to changes federally or possibly having to do with labour market needs and so on—again, this will allow the minister to have some flexibility in order to act quickly and efficiently when necessary.

For example, fluctuating needs in Ontario's labour market: As opposed to having to go through the process that could be laborious with the LG, this allows the minister to make adjustments and react quickly. It's all in the interests of the newcomers to our province and also being able to ensure that the things we have in place are really working as efficiently as possible.

The Chair (Mr. Shafiq Qaadri): Thank you. Any further comments?

Interjection.

The Chair (Mr. Shafiq Qaadri): Yes, go ahead, please.

Mr. Michael Wood: I just wanted to add one item. Everything that the government member said is correct. However, you should look at the three last motions—26, 27 and 28—all together. Presently in the bill, as unamended by the motions, there is power for the Lieutenant Governor in Council, i.e. cabinet, to make regulations with respect to eligibility criteria. What these motions do is allow the LG in C to transfer the reg-making power to the minister, and the minister typically can pass a regulation more quickly than cabinet can. The three regulations go together. First, motion 28 says the LG in C can delegate the matter to the minister, motion 26 says the minister then has the power, and motion 27 says that in the event of a conflict between the two, the LG in C—the cabinet power—prevails.

The Chair (Mr. Shafiq Qaadri): Thank you. Any further comments on government motion 27?

Ms. Indira Naidoo-Harris: Thank you for clarifying.
The Chair (Mr. Shafiq Qaadri): We'll proceed then to the vote.

Ayes

Armstrong, Malhi, Martins, Milczyn, Naidoo-Harris, Potts.

Nays

MacLaren, Smith.

The Chair (Mr. Shafiq Qaadri): Government motion 27 carries.

We'll proceed now to consider the section. Recorded vote: Shall section 36, as amended, carry?

Aves

Armstrong, Malhi, Martins, Milczyn, Naidoo-Harris, Potts.

The Chair (Mr. Shafiq Qaadri): Those opposed? Section 36, as amended, carries.

Section 37, government motion 28: Ms. Martins.

Mrs. Cristina Martins: I move that subsection 37(1) of the bill be amended by adding the following clause:

"(g.1) delegating to the minister any matter that may be the subject of a regulation under subclause (e)(ii)."

The Chair (Mr. Shafiq Qaadri): Comments, if any? If there are no comments, we'll proceed to the recorded vote.

Aves

Armstrong, Malhi, Martins, Milczyn, Naidoo-Harris, Potts.

Nays

MacLaren, Smith.

The Chair (Mr. Shafiq Qaadri): Government motion

We'll now consider the section, as amended—again, a recorded vote.

Ayes

Armstrong, Malhi, Martins, Milczyn, Naidoo-Harris, Potts.

The Chair (Mr. Shafiq Qaadri): Those opposed? Section 37, as amended, carries.

We do not have any amendments or motions received to date on sections 38, 39 and 40. Are there any com-

ments on any of those three sections now? Comments on 38, 39 and 40?

Seeing none, we will proceed to a recorded vote en bloc of these.

Ayes

Armstrong, Malhi, Martins, Milczyn, Naidoo-Harris, Potts.

The Chair (Mr. Shafiq Qaadri): Opposed? Sections 38, 39 and 40 carry.

We're now really back to the housekeeping issues. We can perhaps just dispense with the recording on this one if you're okay.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall Bill 49, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

It has been a pleasure serving you as Chair of justice policy. The committee is now adjourned.

The committee adjourned at 1417.

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Mercredi 3 juin 2015

Standing Committee on Justice Policy

Affirming Sexual Orientation and Gender Identity Act, 2015

Comité permanent de la justice

Loi de 2015 sur l'affirmation de l'orientation sexuelle et de l'identité sexuelle



Chair: Shafiq Qaadri Clerk: Tamara Pomanski Président : Shafiq Qaadri Greffière : Tamara Pomanski

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Wednesday 3 June 2015

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Mercredi 3 juin 2015

The committee met at 1302 in committee room 1.

AFFIRMING SEXUAL ORIENTATION AND GENDER IDENTITY ACT, 2015 LOI DE 2015 SUR L'AFFIRMATION DE L'ORIENTATION SEXUELLE ET DE L'IDENTITÉ SEXUELLE

Consideration of the following bill:

Bill 77, An Act to amend the Health Insurance Act and the Regulated Health Professions Act, 1991 regarding efforts to change or direct sexual orientation or gender identity / Projet de loi 77, Loi modifiant la Loi sur l'assurance-santé et la Loi de 1991 sur les professions de la santé réglementées à l'égard des interventions visant à changer ou à influencer l'orientation sexuelle ou l'identité sexuelle.

M. Shafiq Qaadri: Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Comme vous savez, nous considérons maintenant le projet de loi 77, Loi modifiant la Loi sur l'assurance-santé et la Loi de 1991 sur les professions de la santé réglementées à l'égard des interventions visant à changer ou à influencer l'orientation sexuelle ou l'identité sexuelle.

Colleagues, as you know, we're here to consider Bill 77. Before I invite our first presenters, we received an anonymous submission, which is unusual protocol-wise, but if it is the will of the committee to accept the anonymous written submission, then we'll circulate it to all members. Do I have the will of the committee for that? Fair enough.

TRANS LOBBY GROUP

The Chair (Mr. Shafiq Qaadri): I now invite our first presenters to please come forward, the Trans Lobby Group: Ms. Gapka, Ms. Stonehouse and Ms. Hader. To remind you, you have five minutes in which to make your initial presentation, and then we'll rotate by each party, three minutes for questions, and the times will be vigorously enforced. Please have a seat, and do, of course, identify yourselves. Please begin.

Ms. Susan Gapka: My name is Susan Gapka and I'm chair of the lobby group. These are two members of our committee, Davina Hader and Martine Stonehouse, who are steering committee members.

We're here in support of Bill 77. If we had a little more time than five minutes, we'd want to tell you a little bit about some of the struggles that brought us to forming the Trans Lobby Group about 15 years ago, prior to the Ontario Human Rights Code legislation which would protect us under grounds of gender identity and gender expression; before we were able to change our legal ID to more accurately reflect ourselves—we would have required surgery—and prior to the time when a previous administration had cut funding to sex reassignment surgery.

Historically there have been a lot of challenges to bring us to this point. I think in the few minutes we have, that's kind of the sense of what I'd like to share with you.

This is our written submission. It's called the Ontario Human Rights Code—the little people that could, the little group that could. I'm just looking at some of the opposition documents. I'm looking at a large folder here, a large folder of opposing arguments, and I haven't had a chance to look at it.

When I grew up, there were no role models and there was not a lot of protection. The struggle was difficult. But we did come together and we did self-actualize. And in the past, where science had ruled supreme and the case study had ruled supreme, which replaced modernism—now we work from the area of our truth. Our truth is the way, and that's why we've been able to engage and have some political activism. And now, even still, if you look in the public media, trans people have some actualization.

In Ontario, we have an opportunity, with those three pieces of legislation that we've done by educating many of you in this room and those of you in the Legislature, by doing it through public education, to be ourselves, to self-actualize and self-identify.

I think, just because of time, and I want to actually talk a little more about the history, I'm going to close with a quotation from Magnus Hirschfeld in 1910, when it was illegal to cross-dress and homosexuality meant imprisonment: "Each new truth destroys the one held before it." This comes from Die Transvestiten, The Erotic Drive to Cross Dress, in 1910.

I just want to share with you that we hold our truth to be self-evident, and hopefully that does set off some of the previous truths. Thank you very much.

Would you be so kind as to extend a minute to each of the other panellists?

The Chair (Mr. Shafiq Qaadri): You have one minute and 20 seconds left, so please continue.

Ms. Martine Stonehouse: I'm Martine Stonehouse. Just a little bit from my own personal perspective: I went through the system, through the gender identity clinic, starting in 1982, and at that time they looked at trans people as closet gay people. I was misdiagnosed at the beginning, and this is similar to the treatment that they are giving at the children's gender identity clinic. This misdiagnosis meant that I had to prove to them that I was trans, and it took until 1998 before I was ready to get my approval for surgery. At that point, the government delisted the funding for surgery, just before I could get my approval. It took another 10 years of fighting to get the surgery relisted. I launched a human rights case. I won the case. It delayed my getting surgery for about 25 years in total, between the two things. If I had had my surgery when I was younger—

The Chair (Mr. Shafiq Qaadri): Thank you to our

presenters.

We now have time for questions; three-minute rotation. Mr. Smith?

Mr. Todd Smith: Thank you, Mr. Chair. I appreciate Susan and Martine and Davina coming in to speak to the committee today—and because you did come in, I will give you a little more time in my few minutes to tell your story, if you can quickly, and Davina as well, if she would like to.

Ms. Martine Stonehouse: Okay, quickly finishing up with my end of it, I was saying that it took 25 years in order for me to finally get my surgery. Had I had my surgery when I was younger, I might not have had the medical complications I went through and that I'm still having complications from. That's just a little bit about me.

I'll give it over to Davina.

Ms. Davina Hader: Thank you. I just want to make a comment about growing up as a child. One of the things we forget is that children are alone. We have no one to turn to when we have feelings that are different, and many times we hide. We have no choice but to hide. And so our communities, especially the trans community, have been bullied through time. We have been forced to hide, to be untrue to ourselves and to be denied the basic human rights that others take for granted.

As a child, when I was growing up I knew well before kindergarten that I was very different. I was later diagnosed genetically intersex, and things began to make

sense to me as I got older.

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But we need to be recognized for the queer community that we are, and we need to put an end to erasure and the constant discrimination of our youth. Everyone in the LGBT community has had to face this throughout time, and we need to stop this.

Reparative therapy is wrong, and it can never be allowed to continue. Bill 77 is a needed must. Thank you.

Mr. Todd Smith: Bill 77: What actually does it mean to you to have Bill 77 before us today?

Ms. Davina Hader: It means the end of discrimination. When you're young and you have feelings inside, and you know, deep inside, who you really are, to be told to do something else, to be told to act differently, is a form of discrimination. It's wrong. It's a form of being not recognized for who you really are.

We would rather be helped by the community. We would rather be helped, with a helping hand, to lead us

forward—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Davina Hader: —so that we don't have to put up with, and to live, the wrong life.

Mr. Todd Smith: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Smith.

To you, Ms. DiNovo.

Ms. Cheri DiNovo: Just very quickly—because I'd like to hear more from you as well—I was speaking at a Jer's Vision conference recently, with about a hundred kids in the room, 15- and 16-year-olds. I asked them how many had been taken by a well-meaning parent to a medical professional—and this was a range, not just trans kids but lesbian and gay kids and bisexual kids—who then tried to point them in the direction of straight, tried to make them straight. Some 50% of them put their hands up.

We had people on our GSA committee come and testify. A psychiatrist said their entire practice in Ottawa was on this. It was religiously tinged and religiously predicated. I think a lot of Ontarians are shocked to know

it's going on still.

I just wanted to bring that out—that this does not preclude therapy for children. Questioning children, and questioning anyone, should have therapy, and their parents should be enabled to do that. But we're talking about a specific kind of therapy.

Martine, did you or anybody want to take the balance

of my time?

Ms. Davina Hader: I just wanted to put forward again—and it is something that people have to recognize very strongly—that as children, we know what we feel inside. It is not wrong, and it is not something that needs to be dismissed. When a child comes forward with ways that they're feeling, being totally different, they should be allowed to explore that possibility of being different and celebrating that difference. It doesn't necessarily mean that they're going to end up being a different gender, but it certainly means that they have a chance to be who they really are inside. To celebrate a feeling that doesn't get suppressed is very crucial.

Ms. Martine Stonehouse: Children have their basic gender identity ingrained within them. Children should be allowed to learn and express themselves and find who they really are. We should embrace that and not give therapies that actually harm the child and actually cause

more psychological problems—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Martine Stonehouse: —and sometimes lead children to feel that they have to commit suicide. Therapies like this should not be given at any point in

anybody's life. If people need therapy, it should be to help them find themselves and to be who they really are. We should all embrace that, as a society, and embrace everybody and not discriminate.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms.

To the government side: Ms. Martins.

Mrs. Cristina Martins: I want to thank all of you for being here today. I know that you've all been very strong advocates for LGBT rights. Susan, it's nice to see you here again. I want to take this opportunity to thank you for being here.

Susan, you spoke about there not really being a role model for the community 15 years ago. I'd like to say that I think you really have taken on that role as a role model, so I just wanted to say that. I know that your experience has definitely inspired many others in the

community.

The bill before us is Bill 77, and our government is actually proposing to amend the language in Bill 77 so that certain medical services related to sexual orientation and gender exploration can still be provided without legal implication. The amendments will ensure that transition counselling, gender exploration, acceptance activities and other social supports for transitioning youth are still accessible.

Why is it so important for individuals in the com-

munity to have access to these services?

Ms. Susan Gapka: Around some of the language, we did get a chance to look at the amendments and—so I think also some of these practices are dated 30, 40 years, since the 1970s, when we first started providing OHIP coverage for some of these services. We need to look at some of the language and how are—"sex reassignment surgery" is more than likely outdated as a term to express what we need to be our true selves. "Transition-related services" is really helpful—because it's a bundle of services. It includes access to hormones, it includes access to counselling, it includes social supports—I'm trying to answer without notes here. When we look at it as a bundle, there are a number of things an individual may require, so we're pleased that that would be covered.

Just a quick point: We all had this critical incident growing up, where we were determined by the authorities, be it our parents, be it our schools, be it our—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Susan Gapka: —psychiatric counselling, when we couldn't be who we wanted to be, who we believed we were. That's the moment of crisis which can be the fork in the road. So we're trying to overcome that with this type of legislation.

Mrs. Cristina Martins: Thank you, Susan. Thank

you all for coming in.

The Chair (Mr. Shafiq Qaadri): Thanks to you for coming in on behalf of the Trans Lobby Group.

OUEER ONTARIO

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Mr. Richard

Hudler of Queer Ontario. You've seen the drill: five minutes, three, three, three. Please go ahead.

Mr. Richard Hudler: My name is Richard Hudler. I represent the group Queer Ontario. Thank you for the opportunity to express our support for Bill 77 and urge its quick passage.

So-called conversion therapy is something which we in the lesbian, gay, bisexual, transsexual or transgender—LGBT—communities have long been aware of and feared. Such therapy has no basis in science, and there is much literature that questions and dispels its credibility. The concept of fixing or repairing one's sexual orientation, gender identity or expression is an attempt at making heterosexuality and traditional binary notions of gender compulsory, and it is a dangerous intervention that will inevitably harm children and youth physically, mentally, psychologically and socially.

The very existence of conversion or reparative therapies with regard to sexual orientation and gender identity and expression implies a form of mental disorder privileging those who are heterosexual and cisgendered. Such implicit assumptions on the part of our health care system pathologize individuals whose sexual orientation, gender identity or expression are located outside of society's norms and expectations. We firmly believe that these are not mental disorders—rejecting how the Diagnostic and Statistical Manual of Mental Disorders, DSM, has handled them in the past, regarding sexual orientation, and currently, regarding trans issues. It is our view that when health professionals engage in such practice, they are engaging in a discriminatory, harmful and unethical practice.

For these reasons, we at Queer Ontario are disturbed by the fact that there are health care professionals in Ontario today who provide such interventions and do so spending our tax dollars, billing OHIP. We urge that the province put an end to such abusive practices.

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My background is in social work, but I happened to attend a meeting of the LGBT caucus of the American Psychiatric Association in the days when they were revising the DSM-III to remove the diagnosis of ego-dystonic homosexuality, which legitimized the practice of sexual conversion if the patient wanted to change, even though it was no longer considered a mental illness. One of the doctors speaking at the caucus started to discuss his work treating people, referring to that diagnosis. The moderator of the discussion corrected him, saying the diagnosis was no longer valid. The speaker asked, "What is the effective date?" I relate that to emphasize how strong the will is to continue these diagnoses.

First acting on my sexual orientation as a gay man in 1960, making me a criminal for the first nine years of my adult life, I certainly understand the will of these practitioners to continue their work, considering the amount of pressure they must come under from families and children to be able to fit in. Even today, many opposing Bill 77 recognize that those aspects of the bill relating to sexual orientation are valid. There's no doubt in my mind

that the same will be true for the issues relating to gender identity. Offered a pill to change my sexual orientation, I would say no, even though I spent my life not fitting in. A queer liberationist perspective promotes the freedom of the individual to embrace the sexual orientation and gender identity that feel appropriate to them and to have the freedom to express them without fear of prejudice, stigma, discrimination or oppression.

We believe health care professionals have an ethical obligation to engage in practising what would uphold such principles, and Bill 77 can be a tool to ensure ethical, principled, sensitive and respectful treatment of

gender- and sexually diverse people.

I realize my time is up. We did have some recommendations, but you do have them in writing in our written—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hudler.

To you, Ms. DiNovo.

Ms. Cheri DiNovo: Thank you, Richard, very much for your presentation and thank you for all the hard work Queer Ontario has been doing for all of these years.

I'm wondering if you could maybe share some of your experience, if you yourself have experienced reparative

or conversion therapy.

Mr. Richard Hudler: I was spared that. I don't know; I wasn't too alert sexually as a child. I knew that I was attracted to people of the same sex, but I didn't understand it. It was before we were having even the sex education. I'm really glad to see that they're improving that now.

It wasn't until college that I really recognized and identified my sexual orientation. It was before I actually got involved with the gay community—I'm thinking, had I been offered conversion therapy, I might have accepted it, but I certainly wouldn't now, knowing what I know now.

Ms. Cheri DiNovo: You can use the balance of my time if there's anything else you want to add to your presentation.

Mr. Richard Hudler: I actually managed to get through it all. I surprised myself. It was just the recommendations that we had. I'll read some of them:

—that Bill 77 make it explicit that it applies to all health care and social service facilities in the province of

Ontario, including faith-based facilities;

—that Ontario health and social service professional regulatory bodies, i.e., physicians, psychiatrists, psychologists, nurses, social workers etc., be urged to reflect the contents of Bill 77 in their respective principles, codes of ethics and standards of practice;

—that the accreditation bodies of all Ontario postsecondary educational institutions include that programs in the health and social service professions be provided with guidelines to assist in incorporating the contents of

Bill 77 into curriculum:

—that researchers in the fields of health and social services be made aware of Bill 77 and incorporate its principles in their research ethics;

The Chair (Mr. Shafiq Qaadri): You have 30 seconds left. Would you like to use them?

Mr. Richard Hudler: Thank you—that all stake-holders in the child welfare system be informed of Bill 77 and given the necessary resources to work with parents, guardians and families of gender- and sexually-diverse children and youth in addressing their needs.

Thank you. That was—

The Chair (Mr. Shafiq Qaadri): Thank you, Richard.

To the government side: Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Thank you, Mr. Hudler, for your presentation. I just want to ask you a question, and maybe you can expand a bit further. Why is the passage of Bill 77, which we have in front of us today, so important to further the goals of your organization and the community it represents?

Mr. Richard Hudler: We've certainly had a lot of help with legislation in the past, for the gay community at any rate, but it doesn't change the attitudes of society. And people do this whole business of trying to change sexual orientation and change gender expression—that is continuing to go on. It's very hard on the people who do experience it. We've heard that in our organization considerably. We've known people who have gone through it and have suffered from it. To see Bill 77 come into effect would really help a lot to show that this is not a practice that should be continued.

Mr. Lorenzo Berardinetti: Thank you. Did you want to add anything further to this committee at this time?

Mr. Richard Hudler: I really managed to get everything that I had—and it was Dr. Mulé who wrote the original reports.

The Chair (Mr. Shafiq Qaadri): Mr. Ballard.

Mr. Chris Ballard: Thank you very much for being here today, Mr. Hudler. I really appreciated what you had to say. I'm happy to be here in support of Bill 77.

In the remaining time, I'm interested in your organization and the support it has given to the LGBTQ community in northern Ontario. Can you fill us in a little bit more about the organization?

Mr. Richard Hudler: Our mission statement: "Queer Ontario is a provincial network of gender and sexually diverse individuals—and their allies—who are committed to questioning, challenging and reforming the laws, institutional practices, and social norms that regulate queer people." That's our official statement.

We're kind of continuing the group that preceded us, which was called the Coalition for Lesbian and Gay Rights in Ontario, which had been in existence for almost 35 years.

Mr. Chris Ballard: Very good. Thank you.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Richard, for your presentation.

I'm sorry, we have the PC side. You have the next round. Mr. Walker.

Mr. Bill Walker: You've talked a little bit about your recommendations. Would you want to expand on any of those in any further context?

Mr. Richard Hudler: I'm sorry; about—

Mr. Bill Walker: You referenced a couple of times your recommendations. Do you want any time to expand on any of those and provide further context?

Mr. Richard Hudler: Oh, the recommendations: I think these probably aren't necessarily changes to be made to the bill, but would have to do with the regulations or something. The point is, once the bill has passed, to make sure that it gets out to all these different groups, such as the professional organizations that are teaching people and things like the child welfare system. That's the main focus of these recommendations. It's not only to pass the bill and have it there, but to make sure people know about it.

Mr. Bill Walker: You can use the rest of our time if you want to leave any concluding comments.

Mr. Richard Hudler: No, I think I've pretty well covered everything that I had.

The Chair (Mr. Shafiq Qaadri): Richard, you're the only person who has declined speaking time in this committee for the last 200 years, but in any case, I thank you.

Thank you very much for your presentation on behalf of Oueer Ontario.

TG INNERSELVES

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Mr. Vincent Bolt of TG Innerselves. Please, have a seat. You've seen the drill. No, you may not use Richard's time, but you have five minutes, and then three-three-three. Please begin.

Mr. Vincent Bolt: Good afternoon.

On December 28, 2014, a 17-year-old girl by the name of Leelah Alcorn stepped in front of a truck just outside of Cincinnati, Ohio, and took her life. Leelah Alcorn was a trans girl who had come out to her parents as transgender. Their response was to send her to Christian counsellors, who made her feel like her entire being was wrong. They tried to convince her that she shouldn't go through the transition, and she did not get the support she needed.

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Much like Leelah, when I was around four years old, I realized that I was not like the other girls. I was very tomboyish. I liked to wear boys' clothing. I didn't really like to associate so much with the other girls in my class. You could say there were some warning signs that I would grow up to be a fabulous trans man.

My parents were okay with it when they thought I was just a tomboy. Well, eventually I ended up being bullied very severely at school, and there came a point in the fifth grade, when I was only 10 years old, when I contemplated suicide for the first time in my life; 77% of transgender people here in Ontario contemplate suicide at some point in their life.

I ended up changing schools. I ended up enrolling in a Catholic all-girls school to try to run away from these desires to be male, and I jumped from the pan into the fire, because instead of being bullied by my classmates at

this school, I was bullied by my teachers and by my principal.

I ended up one day realizing, "I can't face this school anymore." So one day after school, I went home and I tried to take my life. Forty-three percent of transgender people here in this province have attempted suicide at some point in their life, and the number for youth between the ages of 16 and 24 is more than double that for adults 25 and older.

It was when I was in high school that I came out as transgender. I started my transition process in the ninth grade. When I eventually came out to my parents, they were in complete distress. I come from a Catholic family. My parents were raised with the doctrine of the Catholic Church, and it was difficult for them. It wasn't until I had their support that I could really be successful. The support that eventually came from my parents and my school is what separates me from Leelah, and that is it.

No parent wants their child to commit suicide. Leelah's parents were probably doing what they thought was best, because they were misguided. They were made to believe that these counsellors would help her. I can't judge or blame these parents for not knowing any better.

Leelah's dying wish was for her life and her death to have meaning. The final words of Leelah's suicide note were: "Fix society. Please." We are all sitting here today because we are here to fix society. Please, make Leelah's dying wish come true.

The Chair (Mr. Shafiq Qaadri): Thank you, Vincent.

To the government side: Mr. Ballard.

Mr. Chris Ballard: Thank you very much for being here today, Vincent. I appreciate your story and all that it's taken to get here.

As I've mentioned, I'm really interested in the work of your organization in northern Ontario. Can you fill me in a little bit more on that? You've talked about why it's so important for individuals in the community to have access to services, but to start with, I'm interested in learning more about the organization and how you support LGBTQ members in the northern community.

Mr. Victor Bolt: I will gladly talk about my organization. I work for TG Innerselves. We are a social service provider in Sudbury and we work directly with the transgender community. We have social support groups available as well as meeting one-on-one with clients. Currently, I'm the only employee. We've only been funded for just under a year by the Ontario Trillium Foundation. We are also very active in providing workshops, presentations and training for other service organizations. We recently made a police training video, which was sent out to services across the province, and we trained the entire Greater Sudbury Police Service, which is over 400 people. We continue to work also around northeastern Ontario. I was recently in Elliot Lake and North Bay, and providing this support in other communities as well.

Mr. Chris Ballard: Very good. Thank you very much for that. I know that Bill 77 is a very important piece of legislation and it's important that we get it right. I'm

happy that the government has been able to work so closely with the member who proposed it to make sure that we continue the spirit of the bill and that we do get it right.

I know that there will be at some point some amendments put forward to Bill 77 so that certain medical services related to sexual orientation and gender exploration can still be provided without implication. The amendments will ensure the transition counselling, gender exploration, acceptance activities and other social supports for transitioning youth are still accessible, and I'm quite happy to be able to say that.

You've touched on-

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Chris Ballard: Okay. Well, I'll just turn it back to you if there's anything else you want to say in the final 30 seconds of our time.

Mr. Vincent Bolt: Working with LGBT youth in an affirming manner is very important. That is the difference between life and death. I'm not saying to kids, "You must be gay or you must be trans." I don't even say that in my own practice. I allow people to come to their own decisions and then provide the support and resources and tools needed for them to—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Ballard.

To the PC side: Mr. Smith.

Mr. Todd Smith: Thank you, Vincent, for coming today. We're glad you are with us today indeed, considering what you went through as a young individual.

When you look at Bill 77, is there anything that you would change in Bill 77? I know some previous presenters here had some recommendations that they would make. Is there anything that comes to mind that you would recommend the committee consider?

Mr. Vincent Bolt: I agree that it's important to ensure that certain resources are still available. As I was saying with a previous question, continue programs like Gender Journeys, where people are able to openly explore, because it is a journey where you are discovering what is best for yourself. I do also agree with some of the previous recommendations as well.

Mr. Todd Smith: The suicide numbers are staggering, and I think that's probably one of the biggest reasons why Cheri has brought this bill forward—and she can speak to that. But they are staggering. Is there anything else that we can do to make those numbers go the other way?

Mr. Vincent Bolt: Passing this bill—that will be the first thing—and getting the information out there and definitely supporting those resources that do exist that give people the social networks they need and the support they need, and ensuring that these conversion therapy practices do not continue in this province.

Mr. Todd Smith: Thanks, Vincent.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Vincent, for your presentation and presence.

We now invite our next presenters to please come forward from—

Interjections.

The Chair (Mr. Shafiq Qaadri): Oh, I'm sorry. Ms. DiNovo, please. The sponsor of the bill—can't forget her. Three minutes. Go ahead.

Ms. Cheri DiNovo: Thanks, Chair, and thank you, Vincent. I just wanted to let the committee know that it was actually in conversation with TG Innerselves in Sudbury that I asked them, "What can we do to affect these hideous statistics?" and it was in part their suggestion about Bill 77. I also heard from other trans activists, but I really want to thank them for their input into this bill.

Also, it's true: I have worked with the government. We have looked at ways of even fleshing out this bill to make it more encompassing, I think, so that we don't in any way send out the message that we're trying to cut off access to transition services or anything like that. We've looked at amendments and I've worked with the ministry as well on those.

I just want to thank you for all the amazing work that you do. If you've got some last words for us, we'd love to hear them

Mr. Vincent Bolt: Thank you very much, Cheri. Well, one of the recommendations we would have made would have been to add those inclusions to this bill that TG Innerselves had suggested. So I definitely thank you for listening to those recommendations, adding those and taking them into consideration. I have nothing else to say. 1340

Ms. Cheri DiNovo: We're good.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues, and thanks to you, Vincent, for coming by and for your presentation.

EGALE

The Chair (Mr. Shafiq Qaadri): Now I invite our next presenters to please come forward from Egale: Helen, Jane, Ronnie and Mike. Thank you, colleagues. Welcome. You've seen the protocol. Please introduce yourselves, and as soon as you're seated, your time will begin.

Please begin.

Mr. Ronnie Ali: Good afternoon, and thank you for inviting us to speak. My name is Ronnie Ali. I'm a psychotherapist working with Egale. I work exclusively with LGBTQ2S youth in Toronto.

Our objectives today are to highlight the need for lesbian, gay, bisexual, transgender, intersex and two-spirit youth to receive appropriate mental health treatment and support services—I'll be using "LGBT" here on out, just for ease—to highlight the risks for LGBT youth who experience anxiety, depression and suicide because of homophobia, lack of family and parental support, reduced social inclusion, isolation, a lack of appropriate mental health counselling and support services; to highlight the need for services for LGBT youth provided by the LGBT community in the LGBT community; to highlight the need for safer-space training within

mainstream agencies and training for all mental health professionals on guidelines for appropriate care of LGBT youth, and to ensure mental health professionals who use reparative therapies are not insured by the province of Ontario.

Egale Canada Human Rights Trust is Canada's only national charity promoting human rights based on sexual orientation and gender identity through research, education and community engagement. Egale's vision for Canada and the world is one without homophobia, biphobia, transphobia and all other forms of oppression, so that every person can achieve their full potential, free from hatred and bias.

In support of our mission, Egale leads numerous national projects, including the Safer and Accepting Schools project and LGBT youth suicide prevention.

Ms. Jane Walsh: I'm Jane Walsh. I'm the interim program manager at Egale Youth OUTReach. In Toronto, Egale operates the Egale Youth OUTReach counselling centre, a counselling centre established in 2014 by Egale for direct service to LGBT youth. Research on LGBT youth suicide identified the need for crisis services. Queer and trans youth were obtaining their only mental health care in emergency rooms and too often and too tragically being discharged and killing themselves.

In the context of a complete lack of appropriate crisis mental health care for LGBT youth, Egale responded by opening the EYO counselling centre with three full-time counsellors with psychology and social work education, providing individual counseling and a drop-in centre with two peer support workers. EYO provides immediate walk-in counselling support for suicide crisis and homelessness crisis in downtown Toronto.

Some 45% of EYO's clients are transgender. A high number are from racialized communities experiencing racism, homophobia and transphobia. Recently published research on trans suicide by Trans PULSE reported that 22% to 43% of transgender people report a history of suicide attempts.

Just for time, I'm going to jump through some of the statistics. One of the major protective factors that that important research found was that having even one piece of ID that reflected the gender of your choice greatly reduced the risk of suicide. EYO works closely with our local Legal Aid Ontario, East Toronto Community Legal Services, to provide name changes. The threat to Legal Aid Ontario clinics we're well aware of, and we're supporting them here.

Egale supports Bill 77. It is not possible to change sexual orientation. Many of the clients of EYO report inappropriate and damaging care by mental health professionals who practise from the belief that it is possible to change a person's sexual orientation or gender. If a mental health professional believes this myth, they must not be insured by the province of Ontario.

Mike Smith is a peer support worker in our EYO dropin centre and a survivor of conversion therapy. His story is all too common in Ontario. I want you, while you're listening to Mike's story, to remember that both the professionals, the psychologist and the psychiatrist, were paid by OHIP. This is why Bill 77 must stop this.

Mr. Mike Smith: Like Jane said, I am a survivor of conversion therapy, my last experience with it being in 2012. For time's sake, I would just like to say that the messages received during this time created extremely intense feelings of fear and hopelessness. With no hope of ever being happy, suicide became a more alluring alternative for me. Suicide was the way for me to escape the world I was trapped in, and escape from all the pain I was living through all my life.

I could not imagine how I could be happy in the future. I was never more depressed, more anxious and more socially isolated, or more self-destructive, than during this time. I was lucky to have a—

The Chair (Mr. Shafiq Qaadri): Thank you, Mike.

Pass to the PC side. Mr. Walker?

Mr. Bill Walker: Mike, I would like to offer you my time to be able to share more of your story with us.

Mr. Mike Smith: I appreciate that. Thank you.

My parents took me to meet with a psychologist when I was 19. I was taken down to a church-based office in Etobicoke from Barrie, where we were living. He diagnosed me with a generalized anxiety disorder and recommended a program based out of Salt Lake City, Utah. I ordered a workbook from their website in April 2010, and as directed by my psychologist, I completed this self-directed program.

Later I was taken to a psychiatrist who also endorsed this program. This man was another Mormon and a close family friend based out of Brantford, and he instilled in me that I could indeed change my sexual orientation through this programming. Included in his treatment was the option to receive prescription medication that would not only lessen my sexual desires for men but make me completely asexual. This is nothing more than chemical castration. I did not agree to this option, but I suffered, and an already fragile self-image deteriorated.

Out of more desperation, I ventured outside of Ontario and I looked at programs in the States. I went to a program in Philadelphia called Journey into Manhood by an organization called People Can Change. This is an organization that has served up to 3,000 men up to this date. It was also during this program that it instilled feelings of brokenness, sickness, illness, insufficiency and deficiency that I internalized—and considered myself to be that way.

The Chair (Mr. Shafiq Qaadri): Thank you. There's still time, Mr. Walker. A minute left or so.

Mr. Bill Walker: Nothing further from me.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I'll move to the NDP then. Ms. DiNovo?

Ms. Cheri DiNovo: Thank you, all of you, for presenting and for all the amazing work that you do.

Michael, continue on with your story and use my time because I think it's very telling and very important to be told.

Mr. Mike Smith: I think I was able to get through what I wanted to say, thankfully, but I'd just like to instill

further the connection with my experience with this programming—from both the doctors that I experienced in Ontario and then recommended me to programs in the States—which was the connection with my suicide ideation.

When I talk about hopelessness, what I mean by that is that I never realized that I could be happy. The messages that they were sending to me were, "You can only be happy as a straight man. We need to fix you in order for you to be actually happy in this world. You need to be corrected in your development in order for you to be authentic with yourself, and only by being authentic with yourself will you be able to live the way that you want to be." I internalized that. That became important, and I was motivated; and my family was motivated to support me in this.

However, I didn't realize how destructive it was until this programming stopped working, and then I realized that I had no hope at all. I was going to be a closeted man who was going to be miserable my whole life, or I could be a gay man who was going to be miserable my whole life; I had no option. So that's why suicide was the option for me.

Thankfully, intervention came in time for me to realize that this was psychological violence and that I couldn't escape it unless someone dragged me out of it, and I realized that I can be happy as a gay man and I can accept myself, and the world can accept me, as a gay man.

I still struggle. I still struggle with depression and anxiety, but I'm getting better. But it's with the help of people who actually took me out of that programming, who are helping me out.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. DiNovo.

We'll move to the government side, to Ms. Indira Naidoo-Harris.

Ms. Indira Naidoo-Harris: Thank you so much, Chair.

Good afternoon. Thank you very much for your presentation today and for coming in and sharing your touching and very personal story. It's very much appreciated here. Egale has been a strong advocate for LGBTQ rights for years, and I want to take this opportunity to thank you for those years of hard work and dedication and vision and for coming in to speak with us this afternoon. Your organization has, of course, done great work for the community, but there is always much more work to be done.

1350

Why is the passage of Bill 77 so important? What makes it important to further the goals, for example, of your organization and the community you represent?

Mr. Ronnie Ali: I work with our crisis counselling centre as a psychotherapist, and many of the clients that we see have experienced abuse at the hands of mental health professionals. The passage of Bill 77 would send a clear message that this is unacceptable, that it's highly unethical and, as Mike said, that it's psychological violence.

It would also send a message to the public about what options are available. If conversion therapy and reparative therapies are sanctioned by our government, then it sends a clear cultural message that this is a viable option for people, which it is not.

In terms of promoting the work of LGBT rights across the country, I think there's a very clear link to why this

bill is important to our organization.

Ms. Jane Walsh: I think this bill, coupled with the commitment of the government for sex education in schools, counters some of the messages that are within religious organizations, as reflected by Mike's experience. I think it's critical that services like ours across the province are funded by mental health and children's mental health funding. It is incredibly difficult to obtain appropriate, affirming, skilled mental health services in this city. We're in a major North American city, so you can imagine what it would be like to try to receive services in a rural place in Ontario.

I think this bill sends a strong message. I'd love to see the money saved by not funding this go into the

community-

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Jane Walsh: —to provide service.

Ms. Indira Naidoo-Harris: Clearly, you feel that this bill is very important and will have a big impact. Do you actually think it will save lives?

Ms. Jane Walsh: Absolutely. The level of suicide ideation and attempts in this province because of crisis around identity and sexual orientation, the money that would be saved—when I say that young queer and trans people are seeking mental health—

The Chair (Mr. Shafiq Qaadri): Thanks to you, Jane, Ronnie and Mike, for your deputation on behalf of

Egale.

COLLEGE OF REGISTERED PSYCHOTHERAPISTS OF ONTARIO

The Chair (Mr. Shafiq Qaadri): We now invite our next presenters to please come forward: Mark, Carol and Joyce of the College of Registered Psychotherapists of Ontario. You've seen the drill: five minutes, then three, three, three. The time begins now.

Ms. Joyce Rowlands: Mr. Chair, committee members, thank you so much for this opportunity to appear before you today to address issues related to Bill 77, Affirming Sexual Orientation and Gender Identity Act.

I'm Joyce Rowlands, registrar with the College of Registered Psychotherapists and Registered Mental Health Thornists of Ontonia

Health Therapists of Ontario.

Regarding the name of our college, generally we use a shorter version: College of Registered Psychotherapists of Ontario. That's because, for the time being, we're not using the "registered mental health therapists" title and we're not registering members in that category. Our members use the title of "registered psychotherapist."

With me today, on my right, is Carol Cowan-Levine, our president. She is a child and family therapist and also

a social worker, and she's a member of our new college. Also, Mark Pioro, on the far right: He is our director of professional conduct and deputy registrar. Mark is also a

lawyer by training.

By way of background, you may be interested to know that our college has been fully operational for just over two months, since the Psychotherapy Act was proclaimed into force on April 1, so we're very new. On April 2, we received a letter from the Minister of Health, the Honourable Dr. Hoskins, sent to our college and three other health regulatory colleges. Dr. Hoskins asked us to work with the ministry to identify how best to ensure that conversion therapy is not a practice engaged in by members of our profession. Our response to the minister, which included our views on Bill 77, is attached here. You've got copies of the minister's letter and our response.

We have posted the minister's letter and our response on our website and we've also communicated to our members and other stakeholders that we intend to ask one of our key committees to develop a professional practice standard prohibiting the intentional use of conversion therapy by our members. We have stated unequivocally that intentional conversion therapy is unacceptable and

cannot be tolerated.

In our letter, we also raise concerns about the need for Bill 77, as health regulatory colleges already have the tools needed to discipline members who engage in practices or therapies that would be considered outside the bounds of acceptable practice. We already have the ability to develop practice standards to prohibit particular therapies or practices, and we have the power to dis-

cipline members who engage in such practices.

Our college questions the need for Bill 77. We are concerned that legislation banning conversion therapy may have a chilling effect on therapists, counsellors and other practitioners who work with young clients struggling with issues of sexual orientation or gender identity. These are important conversations and must be conducted in a safe place, an environment that is safe not only for the young client but also for the therapist, where the therapist isn't constantly fearful about doing or saying the wrong thing, fearing possible legal repercussions should words or intentions be misunderstood and possibly miscommunicated to a parent, for instance. We would ask, could this legislation create a chilling effect similar to political correctness, whereby therapists are afraid to do or say anything that could be misconstrued, where it's simply safer to steer away from certain topics altogether?

As a last point, we're also aware of the debate swirling around Bill 77 with regard to sexual orientation versus gender identity and wonder whether Bill 77, in the end, may do more harm than good, possibly by cutting off

funding and services for those who need them.

I'm now going to turn it over to our president, who would say a few words from the practitioner's point of view, if you will indulge us for a moment.

Ms. Carol Cowan-Levine: Thank you very much. As president of the College of Registered Psychotherapists

of Ontario over the last many years, I have certainly been committed to the critical need for greater public protection and professional accountability. We've made progress and we will continue to do so.

While Bill 77 takes the first steps—

The Chair (Mr. Shafiq Qaadri): Thank you, Carol. To Ms. DiNovo of the NDP.

Ms. Cheri DiNovo: Yes. I'm wondering, if you listened to the testimony before you of all the various organizations, what your reaction was to that and the stories of conversion therapy and reparative therapy

practised in Ontario?

Ms. Carol Cowan-Levine: Is the question directed to me? I'm appalled by any use of conversion therapy. The points that were made by the previous presenter were very powerful indeed. My concerns with Bill 77 rest not in its entirety around that, but in some of the wording that may come to be restrictive in the ability of a qualified clinician to explore some of the turmoil, negativities, depression, anxieties and chaotic thoughts that really prove to challenge youth.

Ms. Cheri DiNovo: Absolutely. There was a testifier who was a psychotherapist and, I assume, part of your organization who also testified in favour of Bill 77.

I just wanted to assure you that the amendments we are looking at make it very clear and explicit that this is not to put a chill on explorations of one's sexuality by youth, but is sending a strong message out.

I wonder if you've looked at the jurisdictional evidence in California and the other jurisdictions in the States that have already banned reparative or conversion

therapy?

1400

Ms. Joyce Rowlands: I concur absolutely with Carol's comments—and we just heard the very last few minutes of one of the speakers, actually. But we have said absolutely, unequivocally that conversion therapy is not acceptable practice and cannot be tolerated.

Our point, really, is that this matter can be dealt with by the regulatory colleges. The tools—the legislation is already in place. The college, in its context—in developing a practice standard, let's say, prohibiting the intentional use of conversion therapy—can create some language and discussion around that so that there's a context and there's more nuance around it.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Cheri DiNovo: So you disagree with the States, and Manitoba now, and other jurisdictions bringing in similar—

Ms. Joyce Rowlands: We don't think that there is a need for legislation. We already have the tools to do it.

Ms. Cheri DiNovo: I wish that was borne out in the experience of all the others who have testified today. I wish it was. Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side: Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Thank you so much to the College of Registered Psychotherapists for coming in today and making your presentation. Our government is proposing to amend the language of Bill 77 so that certain medical services related to sexual orientation and gender exploration can still be provided without legal implication. The amendments would ensure that transition counselling, gender exploration, acceptance activities and other social supports for transitioning youth are still accessible.

Tell me, why is it so important, do you think, for individuals in this community to have access to these

services?

Ms. Joyce Rowlands: It's a necessary service. I'll turn that over to Carol.

Ms. Carol Cowan-Levine: I think that they're very distinct. I'm concerned about some of the blurring within the language of Bill 77 between sexual orientation and the distinct gender identity. But what I would say to that question is that there is a fundamental difference between using a practice that intentionally sets out to change a person and intentionally working with a person who wishes to seek a change in or of self.

Ms. Indira Naidoo-Harris: Thank you. I don't know if anyone else wants to elaborate on that? Okay.

My follow-up is: Can you tell us about how your organization is working to make sure that conversion therapy is not conducted by members of your college?

Ms. Joyce Rowlands: Well, as I mentioned, our college has been in place for two months now, as of April 1. On April 2, we received the minister's letter, which was addressed to our college and three others, asking that the ministry work with us to identify ways to ensure that this type of practice is not engaged in by our members. We have, to date, in that short period, circulated the minister's letter and our response, posted on our website.

We actually had an email or a call from a member after that was circulated, asking whether or not, if this member participated in a seminar on transgender transitioning, he could be seen to be in breach of the prohibition around conversion therapy. So that's a good example of the kind of chill that may already be out there.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Joyce Rowlands: We have also made a commitment to ask one of our key committees to develop a practice standard in this area, to make it perfectly clear to all members of our college that this type of practice, intentional conversion therapy, is unacceptable, will not be tolerated and will be treated as professional misconduct.

Ms. Indira Naidoo-Harris: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris.

To the PC side: Mr. Smith.

Mr. Todd Smith: Thank you, ladies and gentlemen, for participating in the hearings today. One of the words that you've used several times here is "chill," and "chilling." In your letter to the minister, the exact sentence is, "We have concerns about a possible 'chill' effect if professionals are reluctant, as a result of legislative change, to explore issues of gender identity and/or sexual orientation with their clients—for fear of misunderstandings and possible legal repercussions." Can

you walk us through an example—without naming names, of course—of what may happen during a session where a psychotherapist may feel that chill and not provide the services that you believe are necessary?

Ms. Carol Cowan-Levine: I think that there will be a hesitancy perhaps, an example of the curtailment of professional judgement, in the exploration of some of the history within the family, how they learned about sex, going back in some of the years, what it is they're struggling with, and then some of that questioning being misinterpreted, reported back, and then the ramifications of that being perceived as trying to change their current thinking or their current feelings. It's about the dissolution of many of the factors that contribute to where a young person stands. I'm not sure; I think that there has to be breadth in terms of the exploration of the physical, cognitive, emotional and social development of that young person at that age.

I think that some years back, there was the whole notion of false memory syndrome. The example of that—the hesitancy is that then, clinicians were afraid to explore some of the earlier thinking, some of the early history for fear of reprisals and arriving at false con-

clusions. That's what I'm addressing.

Mr. Todd Smith: So you fear that the hands to provide the services may be tied—

Ms. Carol Cowan-Levine: There may be some concern about some reprisal or negative ramification, either by misinterpretation or how it comes to be reported.

Mr. Todd Smith: When you're providing your services, there are all kinds of different outcomes. Some things that happened early in people's lives lead to criminal activity down the road. Do you feel that you are going to be neutered, I guess, in your effectiveness, that your effectiveness as a psychotherapist will be restricted?

Ms. Carol Cowan-Levine: The effectiveness may be

restricted if there is-

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Smith.

Thanks to you, Joyce, Carol and Mark, for your deputation on behalf of the College of Registered Psychotherapists.

MS. ERIKA MUSE

The Chair (Mr. Shafiq Qaadri): Erika, we welcome you right on time. Please come forward. You may have seen the drill. It's five minutes for your opening remarks and a three-three-three rotation by parties.

Paging Erika.

Interruption.

The Chair (Mr. Shafiq Qaadri): Thank you, Erika. Five minutes, and then rotation by parties. Please begin.

Ms. Erika Muse: Oh, okay.

The Chair (Mr. Shafiq Qaadri): Pardon?

Ms. Erika Muse: Sorry, I was just opening my notes here

Hi there, everyone. I'm here to talk about my experiences as a youth and what I experienced during con-

version therapy under the Ontario health system through OHIP-provided care.

I came out as trans at 16. I immediately wanted to receive treatment because earlier treatment, such as puberty blockers and other hormonal interventions, means better outcomes for trans people.

I was told, according to everyone I talked to for health care in my region, that I had to see a specific therapist in order to receive treatment, that he was the only option available under OHIP coverage. From the beginning, seeing him didn't feel therapeutic. There was no focus on my current issues, what was affecting my health or anything that was affecting me. Instead, I was asked to tell intimate, personal details in front of classes of 20 students or more. It became clear that the therapist thought my social life was dysfunctional, and fixing that would fix my identity in turn.

I was denied the medication I asked for that was appropriate for my age, but I had to return for more therapy. In each appointment that I came to, he would comment on newly masculinized parts of my body that had been changing due to puberty—parts he could have stopped from developing had he given me care—then asked me how I could possibly pass as a woman in my future life. He would berate me for not meeting unknown expectations and excoriated my life at that point.

Sessions were not therapeutic, but abusive. They led to trauma about my body and a lack of faith in myself. I left

feeling violated and hurt.

1410

A cycle developed with these sessions. I would fall into a deep depression from his abuse and my lack of assistance with my mental health issues. I would not sleep, leave my room etc. Eventually, I picked myself up and returned because he was literally the only option that I had for treatment under our system.

The cycle continued until I was 23—so eight years of abuse. Eventually, he relented and allowed me some care, but I think the only reason he did is that I proved to him I couldn't be fixed. I have a boyfriend, I changed my name officially etc.

The scars of his abuse remain. I've been suicidal and depressed due to his treatment of me. My self-identity is ruined, and only in the past year have I gained any self-esteem. I live in a body I hate, due to him.

Today, I don't have any access to therapy. The only medical care I'm receiving is from my family doctor. If I try to find any help, I'm instead referred back to my abuser. As far as I'm aware, he still practises today, and I fear for his other patients who are going through the same experience that I did.

The Chair (Mr. Shafiq Qaadri): Thank you, Erika. We'll begin with the government side: Ms. Martins.

Mrs. Cristina Martins: First of all, Erika, I just want to thank you very much for being here today and for sharing with us your very personal story. I know that you have experienced first-hand the negative psychological and physical effects of conversion therapy, and yet you're able to be here today and speak to us and be your

true self and a strong advocate for the transgender community.

What advice would you give to others in the transgender community who are going through or have gone

through something similar?

Ms. Erika Muse: The advice that we generally give each other is to try to find other providers. At this point, what OHIP provides to us is mainly abusive and to some degree conversion-therapy-based care, so we try to find other providers—for example, have our family doctors prescribe hormones and so forth. That way, we don't have to go through that experience. We would try to talk about this, but we haven't had much success until now.

Mrs. Cristina Martins: I'm not sure if you're aware, but our government is proposing to amend some of the language in Bill 77. That was said here earlier, before you got here. It will ensure that transition counselling for youth, gender exploration, acceptance activities and other social supports for transitioning youth are still accessible. We are, collaboratively, all of us, working together—this side and the other side—to ensure that happens. Are you going to see that as a positive thing coming out of Bill 77?

Ms. Erika Muse: Yes, I think that's a positive thing. More care is always good, if it's positive and accepting and care that's not trying to force us out of being our-

selves.

Mrs. Cristina Martins: And I guess, more important—in terms of even providing services for people in the community who are requiring those services; right?

Ms. Erika Muse: Yes.

Mrs. Cristina Martins: I don't have any further questions. I'm not sure if any of my colleagues do—unless, Erika, you wanted to expand a little bit on your own experiences—

Ms. Erika Muse: I don't have much else to say, unfortunately. It's hard to get into that much detail, considering how traumatic it was. I've said what I can

without breaking out crying.

Mrs. Cristina Martins: Thank you for being that voice here today for the voiceless. I'm sure there are many people who have not been able to stir up the courage to come to where you are today. I want to commend you on that.

The Chair (Mr. Shafiq Qaadri): To Mr. Walker on the PC side.

Mr. Bill Walker: Today, of course, is an opportunity to hear as much as we can about something of this nature that is very detailed. The bill itself—is there anything that you can suggest that you would like to see added, deleted or amended? Nobody has a lock on good knowledge for a bill. Is there anything that you think could be changed in this bill that you really want to speak about today?

Ms. Erika Muse: I don't think there's anything that can be changed that I've heard about. I haven't seen the amended copy that she referred to—I'm sorry, I forgot your name—but I read the original version that Ms. DiNovo presented, and I think that worked well. It prevented us from providing conversion care under OHIP, which is very important, because there has been this long

practice of conversion therapy being the promoted option through OHIP. I think that's very important. I think it's also very important that it can't be practised on youth who may not understand what they're getting themselves into.

I think those two interlocking platforms that were presented in the original bill are important and will go a long way towards advocating for better care for LGBT people in Canada.

I don't have any opinions beyond that because, unfortunately, I don't know how to write bills or anything. I think this does a good job and is dealing with a major issue and it should be left at that.

Mr. Bill Walker: The rest of my time, I'm quite happy to give to you if there is anything else you want to add to the discussion.

Ms. Erika Muse: No. I've said everything, but thank you.

The Chair (Mr. Shafiq Qaadri): I have to advise the audience today—

Mrs. Cristina Martins: Ms. DiNovo.

The Chair (Mr. Shafiq Qaadri): Yes, I am quite aware; I do thank you.

I thank you, Mr. Walker. I'm just saying that the committee is being extremely generous with no takers on ceding time. It's a first in parliamentary history, but anyway.

Ms. DiNovo.

Ms. Cheri DiNovo: Erika, thank you for your brave testimony here. We just heard from the college of psychotherapists, and they expressed concern about Bill 77 as putting a chill on the practice of psychotherapy, and that colleges should be able to self-regulate their practitioners and, in fact, they are. As far as I know, all the professional colleges have said that reparative or conversion therapy is wrong. What would you say to that?

Ms. Erika Muse: I would say that, obviously, self-regulation hasn't been working in Ontario. Without going into specifics, there are international organizations that deal specifically with trans therapy, like the Harry Benjamin gender identity disorder association—I forget the exact name for it—that have condemned what we do in Ontario as regressive and not being a good standard of care in this century. If there is an issue going on there and it's affecting people like me, then maybe we need to give the colleges a kind of kick in the butt to make sure that other people won't be hurt.

Self-regulation seems to be letting me and people like me down. I've been suicidal. I've felt like ending my life because of this. I don't think that should be left aside because of those concerns.

Ms. Cheri DiNovo: Thank you, Erika.

The Chair (Mr. Shafiq Qaadri): Thank you, Erika, for your presentation and presence.

MR. JAKE PYNE

The Chair (Mr. Shafiq Qaadri): We have Jake waiting very patiently for the last 1.5 hours by teleconference. Are you there, Jake?

Mr. Jake Pyne: I'm here.

The Chair (Mr. Shafiq Qaadri): Wonderful. As you've heard: five minutes for your initial presentation then a three-three-three rotation by parties. Your time begins now.

Mr. Jake Pyne: Great. Can I just confirm that I'm being heard?

Interjections.

Mr. Jake Pyne: Great, thank you. Good afternoon. My name is Jake Pyne. I'm a Trudeau scholar, a Vanier scholar and a doctoral student at McMaster University. I'm a researcher on a number of provincial and national research teams focused on transgender health, including the Ontario Trans PULSE Project and the Canadian Trans Youth Health Survey. I've been working in the trans community for the past 15 years or so. My current work focuses on gender non-conforming young people and their access to care. I'm also transgender myself.

I apologize for being absent this afternoon. I'm currently in Ottawa at the Congress of the Humanities and Social Sciences and helping to launch a position statement here by Canadian social workers, a statement that comes out in favour of affirmation and against any corrective type of therapy for gender-diverse youth.

I'd like to express my gratitude to the committee for the opportunity to speak, and to MPP Cheri DiNovo for proposing the legislation, which seems to be raising a number of important questions—questions like, is this practice really happening in Ontario? Do we need legislation? Are we sure this is an act of misconduct? The answer to each, unfortunately, is yes.

While I believe there are some religious-based conversion therapies that are practised in corners of Ontario, I'm going to leave that to others to address. I'm also going to leave it to others to address therapies aimed to change sexual orientation. I want to focus instead on therapeutic practices that still linger to a small extent in the fields of psychology and psychiatry, practices that are intended to prevent children from growing up to be transgender specifically, which is the reason we require protection for gender identity specifically in this bill.

It is important to begin by noting that not all children who challenge the rules of gender are or will be trans. Many will not be. Whether they do or do not grow up to be trans is not the issue of concern. The issue is whether they are supported in a manner that respects and affirms all the possible paths for their gender or whether health professionals are attempting to foreclose certain futures for them.

The treatments that we are discussing have a controversial history. Researchers in the 1960s studied and administered psychological treatment to children who failed to conform to gender expectations. Preventing them from growing up to be gay or transsexual was not a hidden agenda in those treatments; it was a stated goal. The goal, rather, was to help, but "help" was understood to mean steering them away from an LGBT future.

Over the 1980s and 1990s, treatment to cure sexual orientation became a lightning rod for critique. It had no

place in a society that was quickly moving towards protection for lesbian, gay and bisexual people. That form of therapy—again, around correcting sexual orientation—was declared unethical by the American Psychiatric Association in 2000, and the specific concern that the APA voiced at the time was that health practitioners must not align themselves on the side of societal prejudice.

Yet, when we look at gender identity, we can see that that has gone differently. Historically, treatments—

The Chair (Mr. Shafiq Qaadri): We seem to be losing you in the middle.

Mr. Jake Pyne: Okay. Did you lose a lot of what I said?

Interjections.

The Chair (Mr. Shafiq Qaadri): No, that's fine. Go ahead.

1420

Mr. Jake Pyne: Okay. Sexual orientation and gender identity have historically been treated differently, so treatments aimed at correcting gender nonconformity in children, preventing transsexuality, continue to this day. To a small extent, they continue in Ontario.

Ontario, in fact, was ground zero in a debate that lasted for several decades regarding appropriate responses to children who do not conform to gender expectations. I am using the past tense intentionally to speak of that debate, because I think this matter really no longer qualifies as a true debate. The vast majority of international experts and professional associations have since taken the same side: against treatment that seeks to correct young people, and for affirmation. The minority of professionals who have declined to evolve their practices are the reason for this bill.

Within recent public debates, those who are opposed to Bill 77 have tended to cast the issue as an argument between "activists" on one side and "professionals" on the other. But if that was ever the case, it is most certainly not the case today.

Within the past five years, statements by the World Professional Association for Transgender Health, the Canadian Association of Social Workers and the International Federation of Social Workers all declare these types of treatment unethical and unwelcome in professional communities. I'm hoping you got a handout that I tried to send, which has excerpts from these organizations that might be helpful.

The Yogyakarta Principles were drafted in 2006 by international human rights experts. They list the treatments that we are discussing under the heading of "medical abuses." Moreover, they note the obligations of nation-states to ensure that this is not occurring in their jurisdictions.

A forthcoming statement that's authored by a group of medical and mental health providers who work with gender-nonconforming children in the US—these providers are calling themselves the Gender Center Consortium—also names these practices under discussion as unethical. Their statement was written by clinicians representing a group of, I think, about eight major US children's hospitals.

Perhaps the most telling, however, is a study published last year in a German child psychiatry journal. Katharina Rutzen and colleagues asked 13 international experts in this field—

The Chair (Mr. Shafiq Qaadri): Thank you, Jake. Your five minutes and so have expired. I now move you to the PC side with Mr. Smith, who will question you for three minutes.

Please begin.

Mr. Todd Smith: Jake, please continue if you would like to wrap up your presentation.

Mr. Jake Pyne: Thank you, I would. I think the most telling piece of information for us is a study that was published last in a German child psychiatry journal. Katharina Rutzen and colleagues asked 13 international experts their opinion on attempting to correct children's gender expression to match social norms. Out of those 13 experts, 11 said they found it unethical. Given that there are only one or two experts in the world practising in this manner, it makes those one or two the only experts in their own field who believe their own practices are ethical.

Some have expressed concern that the clinicians who are providing "medically necessary" services will be targeted by the bill, but what is considered "medically necessary" is not a given fact; it is precisely the matter that's under discussion. On this, the vast majority of international medical, mental health and human rights experts have spoken.

It is not enough that a clinician feels that he or she is "helping." It is not enough that a clinician provide "help" only as he or she understands the term. The nature of the help that gets provided in the province must be consistent with societal values. Does treatment that attempts to prevent young people from growing up to be trans pass that test? No, it doesn't—not in a province that upholds gender identity as protected grounds in the Human Rights Code for residents of any age.

Finally, I heard the concern of Ms. Rowlands from the College of Registered Psychotherapists; however, I believe that concern is not warranted, or at least it does not justify removing this bill. I think it's mistaken to assert that the various colleges of the helping professions in this province have the power to address this issue adequately. If that were the case, we would not have had this problem for the past 40 years. If a therapist is wrongly accused, I believe this legislation allows for that to be resolved and to clarify their practices. Thank you very much.

Mr. Todd Smith: Thank you, Jake. It was difficult to hear your last part because I wasn't able to read along with it in the submission, but you were referencing the presentation that we heard from the psychotherapists. Could you expand on what you were saying there?

Mr. Jake Pyne: Yes. I was saying I heard the concerns from Ms. Rowlands from the College of Registered

Psychotherapists. I think the concern is not warranted, or at least it does not warrant removal of this bill. I think it's mistaken to assert that the various colleges of the helping professions in this province have the power to address this issue adequately. I think if that were the case, we would not have had this problem for the past 40 years. If a therapist is wrongly accused, think the legislation already allows for that to be resolved and to clarify their practices.

Mr. Todd Smith: Thanks for your presentation, Jake. The Chair (Mr. Shafiq Qaadri): Thanks, Mr. Smith.

Now to the NDP. Ms. DiNovo?

Ms. Cheri DiNovo: Thank you very much, Jake, and thank you for that clarification at the end; I think that helped

California, Illinois, Oklahoma, New Jersey—it's in the debating process in New Jersey—and Manitoba as well, are planning on bringing this in, so we're not by any means the first jurisdiction.

I wanted to go back again to the concern that the college of psychotherapists had—that they can regulate themselves, that they should be allowed to regulate, and that this will put a chill on their practice for questioning

youth. What would you say to that?

Mr. Jake Pyne: I don't think it puts a chill on the practice. If it makes medical and mental health professionals aware of the importance of affirmation; if it makes them look up "affirmation" in Google to find out

makes them look up "affirmation" in Google to find out what that would mean, what it would entail and what it doesn't entail; if it makes them research what they ought to be doing and what the latest research says and what young people need, then I think that's a good thing.

Ms. Cheri DiNovo: Okay, thank you. If you want to

say anything else, you've still got some time.

Mr. Jake Pyne: Anything else about the bill in general? I think it's really important for us to get on the right side of history on this. Ontario has an opportunity to take a leadership role to ensure gender-diverse youth are affirmed by the important people in their lives and then get the message from our political leadership that they're valued, not in spite of but because of who they are, so that they get the message that they have futures in this province.

Ms. Cheri DiNovo: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you very much, Ms. DiNovo. Thanks to you—oh, we're going to go to the government.

Ms. Martins, go ahead—three minutes.

Mrs. Cristina Martins: Thank you very much, Jake. I wanted to thank you for joining us here today via teleconference. I think you're right when you talk about the important piece of legislation that we have here before us, and that it is important that we do get it right and that we are working collaboratively with all parties here today to ensure that we do get this right.

Two of the first documents that I ever got to commission as a new MPP last year, in June—the first was for a young man, who must have been about 19 or 20, who wanted to have his name legally changed. He didn't want to be associated at all with the man that he was

before coming out and letting his family know that he was gay. He wanted absolutely nothing in his memory and his history to bring him back to the shame that his own parents put him through when he did come out. He wanted to identify himself as a new person, a new man.

The second document that I had commissioned was for a gentleman in his mid-50s who, at that age, finally found himself and wanted to commission a document so that he could seek sex reassignment at that age. Just to let you know, he's doing well, as he's undergoing some of that therapy right now.

I wanted to commend you as well on all the work and all the advocacy that you have done on behalf of the transgender community. I know that you have extensive experience in this community. How do you see Bill 77

benefiting the LGBTQ community?

Mr. Jake Pyne: I think in its effect, it will be very useful that someone could bring a claim forward. We know it's going to be complaint-driven, so it will be possible to bring a complaint forward. I think beyond that, it sends a very strong message. It has a ripple effect, and one of the effects it has is that it sends a message to parents. We know it will send a message to medical and mental health providers. We know it will send a message to young people that their lives are valued and, as I said, they have futures in this province.

It sends a message to parents, because one of the really big problems is that some of the very pathologizing research and treatment that has been done in this province and elsewhere has accused parents of young trans people of being the problem. It has told those parents it was some faulty parenting on their part, that it was the fault of their own mental health problems that their child turned out this way. So parents are really tripped up and often begin by trying to figure out, "What's wrong with my child, and what's wrong with me?"

This sends a clear message that there is nothing wrong with your child and there is nothing wrong with you. It's a game-changer. It means parents need support, and they can look for support to support their kid rather than working to find out what is wrong.

Mrs. Cristina Martins: Can you tell us just a little bit more about the research that you're doing and how it's

helping the transgender community?

Mr. Jake Pyne: I'm part of a number of research teams. The national Trans Youth Health Survey has just come out with a national report about the state of trans youth health in this country. It compares questions that have been asked to other youth to the same questions asked of trans youth. It has found a number of disparities, as you would expect: Some of the usual suspects around suicidality—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Martins.

Thanks to you, Jake, for your presentation teleconference as well as your written submission.

Mrs. Cristina Martins: Thank you, Jake.

The Chair (Mr. Shafiq Qaadri): Colleagues, we have about 10 minutes or so before our next presenter,

and we're just printing up her submission, which she would like to have distributed and in the hands of all committee members, so we are officially in recess for precisely 9.5 minutes.

The committee recessed from 1430 to 1440.

CANADIAN PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. The committee is back in session. I would respectfully invite you to please be seated.

Our next presenter is ready to present: Nicole Nussbaum, past president of the Canadian Professional Association for Transgender Health. A written submission has been provided to all members of the committee.

You've seen the protocol, Nicole. You have five minutes to make your opening address and three-minute rotations with the parties. The time officially begins now.

Ms. Nicole Nussbaum: Thank you very much, Chair and members of the committee. My name is Nicole Nussbaum. I am the past president of the Canadian Professional Association for Transgender Health. The Canadian Professional Association for Transgender Health is the only national multidisciplinary professional organization working—is my mike on?

Mr. Lorenzo Berardinetti: A bit louder.

Mrs. Cristina Martins: He has a cold and he can't hear if there's feedback.

Ms. Nicole Nussbaum: It's the only national multidisciplinary professional organization working to support the health, well-being and dignity of trans and genderdiverse people. Our mandate includes: educating professionals and enabling knowledge exchange to develop and promote best practices; facilitating networks and fostering supportive environments for professionals working with and for trans people; and encouraging research to expand knowledge and deepen understanding about sex and gender diversity.

Our membership consists of the majority of Canadian medical and psychological professionals who focus their practice on trans health and mental health. Also represented are many leading Canadian academics and researchers studying trans health, social determinants of health and related issues.

The World Professional Association for Transgender Health publishes the Standards of Care. The most recent version sets out a framework for psychological and social interventions for children and adolescents. Standards of Care version 7 notes that "Treatment aimed at trying to change a person's gender identity and expression to become more congruent with sex assigned at birth has been attempted in the past without success ... particularly in the long term." WPATH finds that "Such treatment is no longer considered ethical."

Standards of Care also sets out a role that a mental health professional working with children and adolescents with gender dysphoria should take. The role includes: providing family counselling and supportive psychotherapy to assist children with exploring their gender identity, alleviating disstress related to gender dysphoria, if they are gender dysphoric, and ameliorating any other psychosocial difficulties that may exist; educating and advocating on behalf of gender dysphoric chilren, adolescents and their families in the community, so daycare centres, schools etc.; and providing children, youth and their families with information for peer support—for example, groups that support the families and parents of gender-nonconforming trans children.

Standards of Care 7 also sets out that families should be supported in managing uncertainty and anxiety about their child's or adolescent's development and in helping youth to develop a positive self-concept. Mental health professionals should not impose a binary view of gender and they should give ample room for their minor clients to explore different options for gender expression. It is the role of health and mental health professionals to advocate for these children with community members and schools, and in the courts when necessary.

The Canadian Psychiatric Association also opposes reparative or conversion therapy because it's based on the assumption that LGBTQ identities are indicative of a mental disorder and the assumption that a person could or should change their sexual orientation or their gender identity or gender expression.

The Trans PULSE Project, the largest research project of social determinants of health in Ontario, surveyed 433 trans people in the province. They provided a report to the Children's Aid Society of Toronto and Delisle Youth Services that provided some shocking results in terms of the impacts of a lack of strong parental support for a child's gender identity and gender expression. Specifically, trans youth with strongly supportive parents were 100% housed versus 45% who were not strongly supported by their parents.

Of even greater concern, lack of parental support is associated with significantly higher levels of symptoms of depression, at 23% for those with strongly supportive parents versus 75% for those without.

Consideration of suicide in the past year: 34% for those with strongly supportive parents versus 70% for those without. And, almost incomprehensibly, suicide attempts within the past year: 4% for those with strongly supportive parents versus 57% for those without. That is a 93% reduction in suicide attempts in the past year.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Nicole Nussbaum: Professional efforts to undermine parental support for a youth's gender identity or gender expression, as a result, should be considered not only unethical but dangerous. Direction that parents receive from professionals is formative of their approach to their own children and how they will advocate for—

The Chair (Mr. Shafiq Qaadri): Thank you, Nicole. We will move to the NDP side. Ms. DiNovo, three minutes.

Ms. Cheri DiNovo: Thank you, Nicole. It's lovely to see you again.

Nicole is also a lawyer and has been part of developing Toby's Act as well, to add gender identity and gender expression.

Very quickly: The College of Registered Psychotherapists came in and testified to us that they thought Bill 77 would put a chill on the practice of psychotherapy. Having said that, we are looking at amendments that would loosen the language up so that children exploring their sexuality—we don't want to put a chill on that; we want people to get the help they need. But they oppose Bill 77, saying, in essence, that the colleges already regulate this. They already have said no to conversion and reparative therapy, so why do we need Bill 77? Could you speak to that?

Ms. Nicole Nussbaum: Yes. One point I would make is that we don't know all of the people who are doing this

I'll just mention that as an adult, myself personally, I was sent to somebody who was doing this kind of therapy within a closed community and who was a psychiatrist, in fact, still trying to have this practice. I think it would be unbeknownst perhaps to any of the colleges that this sort of thing is going on.

I think the key is to ensure that children are supported in their gender identity and gender expression and not restricted, and that parental support, affection and attention are not tied to a restrictive gender identity or gender expression. There has been some work on language to address that issue. That provides a window for people who are doing legitimate work with children and not subjecting vulnerable children who can't really advocate for their own rights in these situations to be protected.

Ms. Cheri DiNovo: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. DiNovo.

We'll move to the government side. Mr. Ballard.

Mr. Chris Ballard: Thank you very much for your presentation. I notice that we cut you short. Is there anything else you'd like to add? I'd be quite happy to give my time to hear as much of your presentation as possible.

Ms. Nicole Nussbaum: Sure. I just have a couple of points. Professional direction that challenges or tries to restrict gender identity or expression in the hopes that it will reduce discrimination, harassment or bullying of a gender-independent or trans child reverses the onus of whose job it is to make sure that children are safe. It's our job to make sure that children are accepted and feel supported and safe. It's not the job of a child to restrict what is natural for them in order to avoid harassment, bullying, violence and discrimination. I think that's true with respect to trans people in general: children and adults.

1450

With respect to the bill itself, I would very much recommend that gender expression be specifically enumerated in the bill and in the act. The restrictions that are placed on children very much are geared to gender expression issues—how they dress, how they talk, how they walk and those sorts of issues. Explicitly referencing gender expression is quite important.

I would also expand the exceptions section to reference puberty suppression and transition-related services, including hormone therapies and surgical procedures, including but not limited to the service that's listed under OHIP as sex reassignment surgery.

Mr. Chris Ballard: Very good. Thank you very

much.

Ms. Nicole Nussbaum: You're very welcome.

Mr. Chris Ballard: I don't have any more questions. I don't know if anyone else on our side does. No?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Ballard.

To the PC side. Mr. Walker?

Mr. Bill Walker: Thank you very much. My questions were going to be specific to what you've just referenced in the recommendations portion, to expand on those, because you didn't really get the time. Do you want to add anything more to those, or is there anything else in your presentation that you want to add?

Ms. Nicole Nussbaum: I think that with respect to

recommendations, those are our recommendations.

I would mention a couple of other points. We know that trans students experience quite a bit of discrimination and harassment in schools as a result of their gender expression. What Egale Canada found in their climate survey of schools across the country was that heterosexual cisgender students experienced high levels—10% of straight cisgender students were harassed because of their gender expression. So we know that boxing children in and forcing very strict gender norms on children is not good for anyone. Children need the opportunity to explore, to develop. What we consider now to be genderappropriate toys in society or gender-appropriate clothing changes quite a bit over time.

There's a photo of Franklin Delano Roosevelt as a three-year-old child with long hair and a dress. If we saw that child today, the discussion would be about what to do with that child: Does that child have a problem? What we're saying is that that is not a problem. Exploring, being a child and having a variety of interests that may not represent what we think of societally as gender norms

is an authentic way of being.

The other point I would make is in terms of gender equity more broadly within society. I think we've gotten past the point where we say, "You're a boy or a man, so you can only be these things. You are a woman; you can"—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Nicole Nussbaum: —"you can only be these things." If we were to apply the same sort of standard to, say, women litigators or to men who take parental leave—we wouldn't do that for adults; why would we do it for children?

Mr. Bill Walker: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Walker, and thanks to you, Nicole, for your submission. We have—

Mr. Todd Smith: Not a question; just a comment— The Chair (Mr. Shafiq Qaadri): Yes, in a moment.

Thank you, Nicole, for your presentation on behalf of the Canadian Professional Association for Transgender Health.

Mr. Smith?

Mr. Todd Smith: Just a question for the Clerk: I know there are people that wanted to get on the speaking list for hearings. Can the Clerk explain what happens with the written submissions for those people who don't have the opportunity to appear before the committee?

The Clerk of the Committee (Ms. Tamara Pomanski): Sure. Every single written submission that we received will be forming the public record, it will be exhibited and it will end up in the Ontario archives after a certain amount of time, and it will be associated with this bill.

Mr. Todd Smith: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. mith.

Unless there's any further business before the committee, we are in recess until one hour. There's a vote in the interim. We'll be reconvening for clause-by-clause consideration at 4 p.m. in this room. Thank you.

The committee recessed from 1455 to 1602.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We now return to consider Bill 77 at justice policy. As you know, we're doing clause-by-clause.

Are there any comments or general questions before we proceed to the actual motions and amendments? Any further comments from colleagues?

Seeing none, we'll proceed now to government motion 1, which shall be presented by the not-seated Cristina Martins.

Mrs. Cristina Martins: Quite apologetic, Mr. Chair.

I move that subsection 11.2(1.1) of the Health Insurance Act, as enacted by section 1 of the bill, be struck out and the following substituted:

"Efforts to change sexual orientation or gender identity

"(1.1) Despite subsection (1) and subject to the regulations, if any, any services that seek to change the sexual orientation or gender identity of a person are not insured services."

The Chair (Mr. Shafiq Qaadri): Thank you. The floor is open for comments. You're welcome to begin, Ms. Martins, and then to Ms. DiNovo.

I should also just mention that once we proceed to the vote, if we're going to have a recorded vote, if you would like, that needs to be asked before the vote actually commences.

In any case: Ms. Martins, then Ms. DiNovo.

Interjection.

The Chair (Mr. Shafiq Qaadri): As you like; it doesn't matter. Ms. DiNovo.

Ms. Cheri DiNovo: Yes. We're in support of this. There is just one slight change. There are two "any"s in there.

The Chair (Mr. Shafiq Qaadri): There are two what? Sorry.

Ms. Cheri DiNovo: Two "any"s—"if any, any services." It's just editing.

The Chair (Mr. Shafiq Qaadri): No, I think-

Mr. Arthur Potts: No, that's correct.

Ms. Cheri DiNovo: Oh, it's "if any"?

The Chair (Mr. Shafiq Qaadri): We're encapsulating many "any"s.

Ms. Cheri DiNovo: Oh, I see. I got it. Okay. Withdraw. That's okay.

The Chair (Mr. Shafiq Qaadri): Okay. Any further comments, besides the grammatical attack? Anything else? Comments? Fine. We'll proceed to the vote.

Those in favour of government motion 1? Those opposed?

Interjections.

The Chair (Mr. Shafiq Qaadri): Let's try that again, with conviction this time.

Those in favour of government motion 1? Those opposed? Government motion 1 carries.

Government motion 2: Ms. Martins.

Mrs. Cristina Martins: I move that subsection 11.2(1.2) of the Health Insurance Act, as enacted by section 1 of the bill, be struck out and the following substituted:

"Exception

"(1.2) The services mentioned in subsection (1.1) do not include,

"(a) services that provide acceptance, support or understanding of a person or the facilitation of a person's coping, social support or identity exploration or development; and

"(b) sex-reassignment surgery or any services related to sex-reassignment surgery."

The Chair (Mr. Shafiq Qaadri): Thank you. The floor is open for comments. Ms. DiNovo?

Ms. Cheri DiNovo: Yes. We support this. Again, this goes to the discussion we were having when people were coming forward to testify. It's better wording.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments before the vote? Seeing none, we shall proceed to the vote.

Those in favour of government motion 2? Those opposed? Carried.

We now proceed to government motion 3: Ms. Martins.

Mrs. Cristina Martins: I move that subsection 11.2 of the Health Insurance Act, as amended by section 1 of the bill, be amended by adding the following subsection:

"Regulations

"(6) The Lieutenant Governor in Council may make" recommendations,

"(a) clarifying the meaning of 'services', 'sexual orientation', 'gender identity' or 'seek to change' for the purposes of subsection (1.1);

"(b) exempting services from the application of sub-

section (1.1)."

The Chair (Mr. Shafiq Qaadri): Ms. Martins, could you read the line that is labelled "(6)" again please, which is "Lieutenant Governor"?

Mrs. Cristina Martins: "Regulations

"(6) The Lieutenant Governor in Council may make

regulations,

The Chair (Mr. Shafiq Qaadri): Thank you. Are there any further comments on this motion 3? Seeing none, we'll proceed to the vote.

Those in favour of government motion 3? Those

opposed? Government motion 3 carries.

Shall section 1, as amended, carry? Carried.

Proceed now to section 2, government motion 4: Ms. Martins.

Mrs. Cristina Martins: I move that subsection 27.1(1) of the Regulated Health Professions Act, 1991, as enacted by section 2 of the bill, be struck out and the following substituted:

"Sexual orientation and gender identity treatments

"(1) No person shall, in the course of providing health care services, provide any treatment that seeks to change the sexual orientation or gender identity of a person under 18 years of age."

The Chair (Mr. Shafiq Qaadri): Thank you.

Comments? Ms. DiNovo?

Ms. Cheri DiNovo: Again, this speaks back to what we discussed and what we heard.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll proceed then to the vote.

Those in favour of government motion 4? Those opposed? Government motion 4 carries.

Government motion 5: Ms. Martins.

Mrs. Cristina Martins: I move that subsection 27.1(2) of the Regulated Health Professions Act, 1991, as enacted by section 2 of the bill, be struck out and the following substituted:

"Exception

"(2) The treatments mentioned in subsection (1) do not include

"(a) services that provide acceptance, support or understanding of a person or the facilitation of a person's coping, social support or identity exploration or development; and

"(b) sex-reassignment surgery or any services related

to sex-reassignment surgery."

The Chair (Mr. Shafiq Qaadri): Thank you. Comments?

Ms. Cheri DiNovo: Again, it brings it in line with what we discussed and also the Regulated Health Professions Act, so we're good.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll

proceed to the vote.

Those in favour of government motion 5? Those opposed? Government motion 5 carries.

Government motion 6: Ms. Martins.

Mrs. Cristina Martins: I move that section 27.1 of the Regulated Health Professions Act, 1991, as enacted by section 2 of the bill, be amended by adding the following subsection:

"Person may consent

"(3) Subsection (1) does not apply if the person is capable with respect to the treatment and consents to the provision of the treatment."

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The Chair (Mr. Shafiq Qaadri): Thank you. Comments?

Ms. Cheri DiNovo: Again, we didn't discuss this very much. We didn't hear a lot of testimony. We are delisting it from OHIP for people over 18, but people are free to do what they will, if they are of the age of consent.

The Chair (Mr. Shafiq Qaadri): Any further com-

ments? Seeing none, I will proceed to the vote.

Those in favour of government motion 6? Those opposed? Government motion 6 carries.

Government motion 7: Ms. Martins.

Mrs. Cristina Martins: I move that section 27.1 of the Regulated Health Professions Act, 1991, as enacted by section 2 of the bill, be amended by adding the following subsection:

"Substitute decision-maker cannot consent

"(4) Despite the Health Care Consent Act, 1996, a substitute decision-maker may not give consent on a person's behalf to the provision of any treatment described in subsection (1)."

The Chair (Mr. Shafiq Qaadri): Comments? Ms.

DiNovo.

Ms. Cheri DiNovo: Again, it brings it in line with the Regulated Health Professions Act—a worthy amendment. We support it.

The Chair (Mr. Shafiq Qaadri): We'll proceed to

he vote

Those in favour of government motion 7? Those opposed? Government motion 7 carries.

Government motion 8: Ms. Martins.

Mrs. Cristina Martins: I move that section 27.1 of the Regulated Health Professions Act, 1991, as enacted by section 2 of the bill, be amended by adding the following subsection:

"Regulations

"(5) Subject to the approval of the Lieutenant Governor in Council, the minister may make regulations,

"(a) clarifying the meaning of 'sexual orientation', 'gender identity' or 'seek to change' for the purposes of subsection (1);

"(b) exempting any person or treatment from the

application of subsection (1)."

The Chair (Mr. Shafiq Qaadri): Comments? Ms. DiNovo.

Ms. Cheri DiNovo: Again, we're going to support this.

Just a note, and, I think, duly noted: Nicole Nussbaum mentioned gender expression, which is in our Human Rights Code but not in the bill. Just a word to the minister: It would be great if that kind of wording could also be included at some point.

So we're supporting it.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote, then.

Those in favour of government motion 8? Those opposed? Government motion 8 carries.

Government motion 9: Ms. Martins.

Mrs. Cristina Martins: I move that section 27.1 of the Regulated Health Professions Act, 1991, as enacted by section 2 of the bill, be renumbered as section 29.1.

The Chair (Mr. Shafiq Qaadri): Comments? Ms.

DiNovo.

Ms. Cheri DiNovo: Form, not function; it's all good.

The Chair (Mr. Shafiq Qaadri): Pardon me?

Ms. Cheri DiNovo: Form, not function; it's all good. **The Chair (Mr. Shafiq Qaadri):** I'll proceed to the vote.

Those in favour of government motion 9? Those opposed? Government motion 9 carries.

Shall section 2, as amended, carry? Carried.

Section 3, government motion 10: Ms. Martins.

Mrs. Cristina Martins: I move that section 3 of the bill be amended by striking out "subsection 27(1), section 27.1 or subsection 30(1)" at the end and substituting "subsection 27(1), 29.1(1) or 30(1)".

The Chair (Mr. Shafiq Qaadri): Besides form-orfunction-level commentary, are there any other comments?

Ms. Cheri DiNovo: It's all good, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. DiNovo. We will proceed to the vote.

Those in favour of government motion 10? Those opposed? Government motion 10 carries.

Shall section 3, as amended, carry? Carried.

We have received no amendments, to date, for sections 4, 5 and 6, so I'll take it as the will of the committee—

Interjection.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the consideration of section 4.

Those in favour of section 4? Those opposed to section 4? Section 4 falls.

Ms. Cheri DiNovo: I just wanted to—

The Chair (Mr. Shafiq Qaadri): Yes, please.

Ms. Cheri DiNovo: This is just pro forma, really, again, just so people know.

Mrs. Cristina Martins: That's right, because my understanding is you can't remove an entire section from a bill, right?

Ms. Cheri DiNovo: Yes.

Mrs. Cristina Martins: Okay.

The Chair (Mr. Shafiq Qaadri): Thank you. We have not received, to date, amendments for sections 5 to 6, so I can take it the will of the committee is to consider them en bloc?

Interjection.

The Chair (Mr. Shafiq Qaadri): Sections 5 and 6? Fair enough. Shall sections 5 and 6 carry? Carried.

There is a motion here, government motion 11 with reference to the title of the bill. Ms. Martins.

Mrs. Cristina Martins: I move that the title of the bill be amended by striking out "or direct".

The Chair (Mr. Shafiq Qaadri): Any questions or comments on that? Seeing none, we shall—

Interjection.

The Chair (Mr. Shafiq Qaadri): Sorry? Ms. Cheri DiNovo: I'm fine with that.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote.

Those in favour of government motion 11? Those opposed? Government motion 11 carries.

Shall the title of the bill, as amended, carry? Carried.

Shall Bill 77, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

I would thank you, colleagues, for your patience and endurance. Thanks also to the members of the public.

I have to officially declare that I think justice policy now holds the record for both the longest bill, which was affectionately known as the energy infrastructure or gas plant hearings and now the shortest bill, Bill 77. Thank you. The committee is adjourned.

The committee adjourned at 1616.



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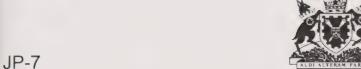
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ISSN 1710-9442

Legislative Assembly of Ontario

First Session, 41st Parliament

Official Report of Debates (Hansard)

Thursday 17 September 2015

Standing Committee on Justice Policy

Appointment of subcommittee

Assemblée législative de l'Ontario

Première session, 41e législature

Journal des débats (Hansard)

Jeudi 17 septembre 2015

Comité permanent de la justice

Nomination des membres du sous-comité



Président : Shafiq Qaadri Greffière : Tamara Pomanski

Chair: Shafiq Qaadri Clerk: Tamara Pomanski

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 17 September 2015

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 17 septembre 2015

The committee met at 1408 in committee room 1.

APPOINTMENT OF SUBCOMMITTEE

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I call the meeting of the justice policy committee to order. As you know, we have a heavy agenda today: the appointment of a subcommittee member. The floor is now Ms. Scott's.

Ms. Laurie Scott: I move that the following changes be made to the membership of the subcommittee on committee business: that Mr. Smith be replaced by Mr. Hillier.

The Chair (Mr. Shafiq Qaadri): Thank you. Are there any further comments or concerns?

We'll proceed to the vote. All those in favour of this motion presented? All opposed? The motion is carried.

Welcome, Mr. Hillier, officially, to the justice policy committee.

Mr. Randy Hillier: Thank you.

The Chair (Mr. Shafiq Qaadri): And Ms. Scott—and everyone.

Are there any further issues before the committee? Yes, Mr. Hillier?

Mr. Randy Hillier: I would like to propose, in speaking with the Clerk—the cut-off time for requests to appear before the committee has now elapsed. If there's agreement to have a subcommittee meeting right now, I can postpone those discussions and just have them in the subcommittee, or we can do it at the whole committee. Do we have agreement that we can have a subcommittee meeting?

The Chair (Mr. Shafiq Qaadri): It's at the will of the committee. We can, as Mr. Hillier says, either stay as full committee to discuss or adjourn and then reconvene as a subcommittee. What is the will of the committee?

Mr. Bob Delaney: If it's business of the subcommittee, it should be a duly constituted subcommittee, and I'm afraid, Chair, I am not going to have the time to attend such a subcommittee right now. I'm running a little bit late on a commitment as it is.

The Chair (Mr. Shafiq Qaadri): All right, so I take it you'd like—

Mr. Bob Delaney: So the subcommittee can meet at the call of the Chair, and we'll work out a schedule with the Chair.

Mr. Randy Hillier: I'll table a discussion, if I could, at the moment, then, if the subcommittee can't meet.

It certainly appears, from my read on things, that we're not going to have a substantial number of delegations to this bill in committee.

The programming motion has two days allotted for delegations and then a further two days for clause-by-clause.

The Chair (Mr. Shafiq Qaadri): The Clerk would just like to intervene for a second.

The Clerk of the Committee (Ms. Tamara Pomanski): I don't have all the numbers in, but as of now, we're definitely going to the second day. I don't think we'll complete two full days, unless I've missed a few calls, but we'll definitely have a full day of hearings and move to the second day for sure.

Mr. Randy Hillier: Okay. Then I'll table the discussion.

The Chair (Mr. Shafiq Qaadri): Okay, fair enough.

Any further business before we adjourn?

Mr. Bob Delaney: Motion to adjourn.

The Chair (Mr. Shafiq Qaadri): Okay, we're adjourned until next Thursday.

Thank you, colleagues.

The committee adjourned at 1411.

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JP-8

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Legislative Assembly of Ontario

First Session, 41st Parliament

Official Report of Debates (Hansard)

Thursday 24 September 2015

Standing Committee on Justice Policy

Protection of Public Participation Act, 2015

Assemblée législative de l'Ontario

Première session, 41^e législature

Journal des débats (Hansard)

Jeudi 24 septembre 2015

Comité permanent de la justice

Loi de 2015 sur la protection du droit à la participation aux affaires publiques



Chair: Shafiq Qaadri Clerk: Tamara Pomanski Président : Shafiq Qaadri Greffière : Tamara Pomanski

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 24 September 2015

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 24 septembre 2015

The committee met at 0900 in committee room 1.

PROTECTION OF PUBLIC PARTICIPATION ACT, 2015 LOI DE 2015 SUR LA PROTECTION DU DROIT À LA PARTICIPATION AUX AFFAIRES PUBLIQUES

Consideration of the following bill:

Bill 52, An Act to amend the Courts of Justice Act, the Libel and Slander Act and the Statutory Powers Procedure Act in order to protect expression on matters of public interest / Projet de loi 52, Loi modifiant la Loi sur les tribunaux judiciaires, la Loi sur la diffamation et la Loi sur l'exercice des compétences légales afin de protéger l'expression sur les affaires d'intérêt public.

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice.

Welcome, colleagues, and welcome to members of the public. As you know, we're convened here as justice policy to consider Bill 52, An Act to amend the Courts of Justice Act, the Libel and Slander Act and the Statutory Powers Procedure Act in order to protect expression on matters of public interest.

We have a number of presenters—a very full day.

TEDDINGTON PARK RESIDENTS ASSOCIATION INC.

The Chair (Mr. Shafiq Qaadri): I'd invite our first presenter to please come forward: Eileen Denny, president of the Teddington Park Residents Association. Please have a seat. Ms. Denny, for you and for subsequent colleagues who will be presenting, you'll have five minutes in which to make your opening address, followed by three minutes for each party in rotation, and this will be enforced with military precision.

I invite you to please begin now.

Ms. Eileen Denny: Thank you for giving Teddington Park Residents Association Inc. this opportunity to provide our perspective on Bill 52 concerning the amendments to the Courts of Justice Act, the Libel and Slander Act and the Statutory Powers Procedure Act in order to protect expression on matters of public interest.

My name is Eileen Denny and I'm the president of Teddington Park Residents Association. We are an

active, independent, not-for-profit incorporated association that presents the concerns of residents in north Toronto located within the former city of Toronto limits.

Our association would like to thank Dr. Mayo Moran, panel chair, and the other panel members, Mr. Peter Downard and Mr. Brian Rogers, for their contributions in facilitating, considering and listening to our submissions. It was an enlightening process to be participating among experts and concerned citizens to ensure that our voices and future voices are not silenced by lawsuits that are without merit.

Why the House should support the passage of Bill 52: The Protection of Public Participation Act will put a stop to the growing use of lawsuits used to silence and dissuade individuals from freely expressing and broadly participating in matters of public interest. The act is clear and comprehensive. It provides a defined purpose and a quick review process for identifying and dismissing lawsuits via motion. The act also proposes cost consequences that discourage strategic lawsuits from starting. For these reasons, our association fully supports the passage of the act. However, our association would like to address our concerns that quasi-tribunals such as the Ontario Municipal Board may also lend themselves to proceedings that have the effect of suppressing public participation.

TPRA, our association, regularly participates on a local level, on a city-wide and provincial basis to keep up to date on planning matters. Our association believes it is at the individual level where the most significant damage occurs. If individuals are prevented from speaking on local and surrounding neighbourhood issues, what would be the likelihood of their participation on larger and more egregious issues that may be of greater public interest? It is from this perspective that we would like to address the "purpose" segment of the legislation, section 137.1(1), "(a) to encourage individuals to express themselves on matters of public interest," and "(b) to promote broad participation in debates on matters of public interest," as they apply to the OMB.

Our focus is on three broad areas: the costs of participating at the board, the structure of the board, and the tactics.

The costs of participating at the OMB: When a developer appeals a land use decision to the OMB, the developer will and can afford to spend significant amounts of money to retain legal representation and planning expertise to present and argue their case. To even out the

playing field, our association must seek donations from our residents, and the donations are comprised of after-tax dollars. In many cases, residents contribute what they can. I can remember an elderly resident who made a donation from her coffee tin: a tight fist of bills that was pressed into our board secretary's hand as she told us, "Please take this. It's all I can give but it's important that you have it."

Even when there are funds, we are at a disadvantage. Lawyers and planners aren't eager to represent our side of the case, which generally calls for vigorously arguing to support law and policy. When we don't raise sufficient funds, seeking party status and self-representation requires a huge commitment of time. Not having enough time or money are deterrents to effectively voice concerns of public interest that matter. The lack of funds to hire necessary expertise and legal representation to defend or argue a position effectively discourages public participation.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Eileen Denny: I beg your pardon?

The Chair (Mr. Shafiq Qaadri): You have 30 seconds left.

Ms. Eileen Denny: Oh, I'm sorry. My dialogue is much longer than that.

My request in passing this bill is that at the same time, concurrently, within the set time—let's say four weeks—from the passage of this act, the OMB take a mandatory first step to provide transcripts for its proceedings to encourage individuals to express themselves and to provide broad participation—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Denny. We'll now offer the floor to Mr. Hillier of the PC

Party—three minutes.

Mr. Randy Hillier: It is unfortunate that we have such little time that has been allotted by the motion for presentations—five minutes—on such an important bill.

It certainly appears to me that you're addressing problems mostly with the OMB, which is not really what this bill is targeting. This is targeting, more often than not, defamation and other actions, in a broad spirit, in our court system, from preventing the public from participating in discourse.

I do know that there are a number of things being talked about in the House regarding amendments and whatnot to the OMB, but I don't believe that that is really what Bill 52 is trying to address. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. To you, Mr. Vanthof.

Mr. John Vanthof: Thank you very much for coming. From what I understand, your concerns with Anti-SLAPP legislation are—basically, you feel persecuted under the way the OMB runs. If you've come a long way to speak about this, if you would use the rest of my time to continue your presentation, I'd be happy.

Ms. Daiene Vernile: That's three minutes.

Ms. Eileen Denny: I beg your pardon?

Mr. John Vanthof: You can use my time to continue your presentation, if you would like to.

Ms. Eileen Denny: I have encountered numerous tactics to stifle our association's participation. This includes threats involving lawsuits; threats for costs; attempts to prevent us from speaking by legal counsel for the developers and by presiding board members during proceedings; intimidation; interruptions when speaking; attempts to discredit character, credibility and standing, both verbally and in writing; and persistent, dogged cross-examination by proponents' solicitors that at times are hostile, sarcastic and far from civil.

For example, following a rather difficult cross-examination during a hearing, the other residents who were asked to speak next independently declined, after what they witnessed. Just before closing arguments, I lost my composure and I asked the board member to step down, to take a few minutes to allow me to breathe and refocus.

Participation and free expression are never easy at the board. Only the people in the room bear witness. Many of these tactics would be curtailed if the board maintained an independent, publicly accessible record—transcripts of all of its proceedings.

It is 2015, and the OMB proceedings are conducted without transcript or independent recording. There are no independent verbatim minutes, transcripts, audio or video recordings detailing the proceedings from start to end. This does not encourage broad, robust participation and expression when transcripts are not available to support a written decision or how the proceedings were conducted.

Under the purpose of this act: It is called the protection of public participation. How could the public be sure that the government-appointed board members would hold fair hearings and stay within their administrative powers, both procedurally and substantively?

We also believe that an independent, accessible quasijudicial body is needed for all who have cause or reason to have a decision reconsidered. Democratic processes require fair and impartial adjudications. That is our one request.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Vanthof. To the government side: Mr. Potts.

Mr. Arthur Potts: Thank you, Chair, and thank you, Ms. Denny, for coming. I'm very familiar with your association. I used to work for Anne Johnston, who was a city councillor and Metro councillor. I know it's a tremendous area that you live in, and I appreciate very much you coming here.

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If I pick up on Mr. Hillier's remarks, your comments really are about how complicated the OMB can be and how difficult it is to participate. Although I get, in the act, it seems to imply—this specifically is about slander issues and other ways of intimidating through the courts. I'm aware that one of the big first cases here actually involved OMB proceedings, but the issue that we're trying to address is the slander that comes outside of the OMB process. But I wanted you to know that we do have bills in place that are looking to reform how the OMB works and to address those issues in another forum.

COMITÉ PERMANENT DE LA JUSTICE

I'll give you a sec, but you mentioned one recommendation about restructuring the OMB. Do you have one or two more recommendations you want to get on the record, and we'll go from there?

Ms. Eileen Denny: I just believe there should be an adjudicative body. I think that right now, if we were to structure the OMB today, it would not be the institution it has become. I'm here as a positive force despite how difficult it is. I think there's room for us to move that pendulum back to centre. I just think it's stuck.

One of the very first steps that I believe would help is to have transcripts for all proceedings. Toronto has about 300 proceedings, and there is not a single transcript. So if I or a resident was not treated properly or we did not receive natural justice at the board, we couldn't go to another level to have that reviewed because they would need backing. There would be only witnesses.

From that standpoint, I believe the protection of public participation, the broad purpose points, capture this, and that is why we also were participants at the consultations. We were actually invited by the panel to discuss, because they were interested in our concerns. I understand that when the report came out, the tribunals were not captured in that. But I was trying to capture the board from a public participation perspective, not from a slander perspective, because I think it's adequate. We have no concerns with how this legislation is actually structured.

Mr. Arthur Potts: Great. And as I say, there is a private member's bill by my colleague Peter Milczyn which is looking to address some of those inequities in the OMB.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts, and thank you, Ms. Denny, for your deputation on behalf of Teddington Park Residents Association.

ONTARIO FOREST INDUSTRIES ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward. From the Ontario Forest Industries Association is Jamie Lim, president, and Christine Leduc, director of policy. Welcome.

Ms. Jamie Lim: Hi. Thanks.

The Chair (Mr. Shafiq Qaadri): Please begin now.

Ms. Jamie Lim: The renewable forest products sector is Ontario's second-largest industrial sector, supporting 170,000 hard-working Ontario families in 260 communities. Forestry can be Ontario's greatest renewable opportunity, and working together to protect this sector's global reputation, we can grow Ontario's natural advantage.

Before discussing why you should support amendments to Bill 52, I'd like to share forestry facts with you, because knowing the truth is always important.

The world wants wood. Architects are building taller wood buildings, and smart consumers, concerned with climate change, are choosing forest products because they know trees grow.

Ontario has approximately 85 billion trees, and only 0.5%—0.5%—of Ontario's trees are harvested annually. For every tree harvested, three take root.

All Ontario forestry companies must operate under the Crown Forest Sustainability Act. Under this act, forests are regenerated after harvest, and the long-term health of the forest must be maintained. It's the law.

But professional environmental groups want the public to think that harvesting destroys forests and causes deforestation. This is just not true. Deforestation is the permanent removal of forests for an alternative social need like farming or the creation of communities. Toronto was once a forest.

Ontario's forest sector is not in the business of destroying forests. We are in the business of managing Ontario's renewable resource responsibly and supporting hard-working individuals for generations. Yet, if passed as drafted, Bill 52 will protect professional radical environmental groups whose misinformation campaigns target our customers, allowing these groups to raise funds through a business model built on harassment and fearmongering.

Bill 52 should not make defamation profitable for groups like Greenpeace. The appendix I've included outlines Greenpeace's recent misinformation campaigns and includes an email Greenpeace sent to their cyber-activists asking them to write false product reviews. If I ever in my life asked a group of stakeholders to write something false, I'll tell you something, my board would hold me accountable. Greenpeace should be held accountable.

Bill 52 should not provide professional environmental groups with a licence to defame. The government has always told us that SLAPP is about the little guy, and we get that; protecting the individual's right to express themselves, absolutely. But Greenpeace is not the little guy. It has offices in 55 countries, annual global revenues of \$300 million and, in Canada in 2012, \$20 million in annual revenue.

Greenpeace publicly supports Bill 52—no surprise. They were even thanked on the floor of the Legislature for their advocacy for this very important bill.

Job creators must be able to protect their reputation.

At July's Canadian Council of Forest Ministers meeting in Thunder Bay, ministers recognized the significant economic implications of misinformation, and they committed to taking direct action to ensure customers recognize Canadian forest products as the environmentally preferable option. Minister Mauro stated, "We are going directly to [customers] to ensure that they understand ... that here in Ontario, [we harvest] our fibre in a very, very sustainable way."

By amending Bill 52 to stop defamation at the source and hold professional environmental groups accountable, government can help Minister Mauro set the record straight. We've all seen well-meaning legislation have unintended consequences in Ontario before. The ESA is a perfect example of an act that has proven to be unimplementable and problematic. In 2006, OFIA asked government to edit 50 words because, as written, the

ESA made it nearly impossible for job creators and government to implement. OFIA provided sound constructive advice then, and we're doing the same today.

Favouring professional environmental groups with legislation that assures that they will not be held accountable for their deceitful falsehoods is nothing short of a declaration to forestry that their efforts to grow Ontario's renewable economy do not matter.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Lim, for your opening remarks. I now offer the floor to Mr. Vanthof of the NDP.

Mr. John Vanthof: I'd like to start by thanking you, Jamie, for coming, and for your organization's advocacy for the forestry industry, because the forestry industry is very important to my part of the world and very important to the province. It is one of the few truly renewable industries.

What I'd like to focus on is: You mentioned an amendment to try and make this act better. Could you elaborate on how you would see making this act the best it could be?

Ms. Jamie Lim: For sure. Mr. Vanthof, do you mind if I just finish four paragraphs? It'll take a minute.

Mr. John Vanthof: It's your choice.

Ms. Jamie Lim: Okay.

This would be a terrible unintended consequence. Without amendments, the actual effects of Bill 52 will be harmful. Instead of protecting legitimate free speech, Bill 52 will enable misinformation. Instead of curbing frivolous lawsuits, Bill 52 will extinguish lawsuits of merit.

Amend Bill 52. Make Bill 52 fairer. Work with us to protect forestry's reputation from these destructive defamation campaigns. Hard-working families are counting on you.

Again, Bill 52 should not provide large, well-financed professional environmental groups a licence to defame our province's job creators. Forestry's reputation does matter.

Mr. Vanthof, we've recommended three very, very tiny amendments to the whole act. I'm just trying to find them. They're in my long version. We have suggested that the bill—you received a recommendation from the Federation of Northern Ontario Municipalities, FONOM. FONOM suggested that if Bill 52 really is about the little guy and encouraging individuals to participate without fear of a lawsuit, then this amendment should limit the application for Bill 52 to individuals or groups with operating revenues under \$100,000, and that's before they get started. We recognize that they may need to raise funds and stuff. That's once they get going. But we're saying: When they start, what are their revenues?

Secondly, we suggest that the term "public interest" that's in 137.1 would allow legitimate lawsuits to be extinguished, and it should be replaced because it's too broad. It's sort of like the term "overall benefit" in the ESA, which the Liberal government tried to remove. Your lawyers tried to remove it in a budget bill a couple of years ago because those two words make the ESA

unimplementable. Here we are again, with Bill 52, with two words that are undefined.

So instead of "public interest," we believe that Bill 52 should incorporate a bad-faith-based test. If something is brought forward in bad faith, it will be extinguished. "Bad faith" is a term that has legally been defined, so it would scope down Bill 52.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Vanthof. To the government side: Mr. Berardinetti, for three minutes.

Mr. Lorenzo Berardinetti: Thank you for your presentation this morning. When the legislation was drawn up, before the government did that, they struck an expert advisory panel to go through various parts and decide on the right balances between protection of public participation and protection of reputation and economic interests. I see what you're trying to say. I guess you disagree with what the expert panel says, from what I'm getting, in that you want to make some changes to it.

Ms. Jamie Lim: If you were just going to take what the expert panel said and write your bill on that, then you wouldn't need a hearing and you wouldn't need consultation with stakeholders. We're your second-largest job creator in the province of Ontario. We're not asking you not to pass Bill 52. We are for freedom of individuals' rights to speech. We think that's Canadian. That's motherhood, for God's sake.

We are against a bill that will give a free licence to groups that are professional and that make their livelihood from doing what they do to defame. I've included an appendix in my submission that has slides that are sent—and they harass. You talk about individuals being harassed. The forest sector in Canada right now is being harassed. When we don't have customers, we close down mills. We can't make products; we can't make the products for the tall wood buildings that we've passed building code changes for. Those products won't be made in Ontario. We'll be shipping them in from other jurisdictions. If we don't have customers, we won't make products. That's business.

We're asking for two tiny amendments. One is to scope it down, to say that revenues for these individuals and groups, when they get started, should be less than \$100,000. Then a group like Greenpeace, for example, that has \$3 million in assets just here in Toronto, may be excluded and have to do what others have to do in the courts of law. They would be held accountable for their defamation. They can still say what they want, but they would be held accountable. We think that's fairer.

Mr. Lorenzo Berardinetti: Okay, thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Berardinetti. To Mr. Miller, on the PC side.

Mr. Norm Miller: Thank you, Jamie, for coming in and speaking. It's a shame that the government, in its wisdom, decided to only give five minutes per presentation. I'd certainly like to get on the record that the PC Party appreciates your industry and what it does for communities particularly in northern Ontario.

You've provided an appendix with information about some of Greenpeace's actions to do with the forestry industry. Can you go over that a little bit, about what they're doing and how it's affecting jobs in Ontario?

Ms. Jamie Lim: Sure. If Bill 52 is about slander and about rights, we just think that when you have professional environmental groups whose business model is based on fear-mongering and harassment—I mean, they go down and they target a US customer, and then they harass them until they change their buying practices.

In the appendix, I've given you a few examples. Last December 1, Greenpeace sent out a cyber-activist alert, "Happy Cyber Monday." If you go to the last page, they gave their cyber-activists five tasks for December. The fourth task was, "Write a false product review on Best Buy's website. Be creative and make sure to weave in the campaign issues." I'll tell you, if I ever sent an email like that to my stakeholders, to mayors in northern Ontario, I wouldn't have a job. I'd be held accountable. So we don't think that should be protected by Bill 52.

If you go to appendix 2, you can go to a print screen of their website. Here they show a recently harvested area. Trees grow. If you went to an area where farmers had just harvested their wheat in the fall—John, you would know this—the land base doesn't look too great, but the good thing is that your crops grow. Our crops grow. But Greenpeace sensationalizes forestry because, as you can see on that page, it's all about donations. It's take action, donate, and give \$25 monthly.

If you go to the next slide, #StandForForests: "Canada's boreal forest is where the world's highest forest degradation takes place." That's just not true, but this is what they're showing to customers in the United States and getting them not to buy Canadian forest products.

If you go the next slide, "Destruction of Canada's boreal forest in northern Ontario," that one: "Only 8% of Canada's boreal forest is protected from logging." At first they're talking about northern Ontario—

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Lim, for your presentation on behalf of the Ontario Forest Industries Association.

Ms. Jamie Lim: Thank you.

THE ADVOCATES' SOCIETY

The Chair (Mr. Shafiq Qaadri): We'll now invite our next presenters. We're going to be skipping one. We're awaiting the arrival of one of our presenters.

I'll invite Mr. Brian Gover and Dave Mollica of the Advocates' Society. Please come forward. You've seen the protocol. You have five minutes in which to make your opening address, three minutes for question rotation. Please begin now.

Mr. Brian Gover: Thank you very much, Mr. Chair. My name is Brian Gover. I am a director of the Advocates' Society and chair of the society's Bill 52 task force. Joining me is Dave Mollica, the society's director of policy and practice.

Thank you for the opportunity to make oral submissions to the standing committee today. The society has

provided each of you with a written outline to complement today's presentation. I see Ms. Pomanski has distributed that.

The Advocates' Society is a national association of over 5,000 litigators, most of whom practise in Ontario. Our members represent a wide variety of parties in litigation, from individuals to multinational corporations. We act for plaintiffs; we act for defendants. We practise on Main Street; we practise on Bay Street. We practise in rural and urban Ontario. The submissions I make today reflect the diverse and considered views of the litigation bar.

The society has followed the evolution of this bill with great interest. Let me start by stressing that the society is supportive of the laudable goal of Bill 52 in ensuring that public discourse on matters of importance are not silenced by the looming threat of litigation. That said, sometimes the law of unintended consequences is the most important law of all. I ask the committee to consider what may be the unintended consequences of certain provisions in Bill 52.

In my submissions, I'll focus on three such unintended consequences which pose concern to the society: first, the imposition of an unduly high burden on a plaintiff to bring a claim to which there can be absolutely no defence; secondly, the failure to consider the plaintiff's access to justice rights in the balancing of interests at stake; and thirdly, changes to the substantive law of defamation that are contrary to the common law.

The proposed section 137.1(4)(a) of the Courts of Justice Act provides that, once it is shown that a suit arises from an expression related to a matter of public interest, the action will be dismissed unless the plaintiff demonstrates both that the suit has "substantial merit" and that the defendant has "no valid defence." It is appropriate to require that the plaintiff establish that its suit has substantial merit. However, simultaneously requiring the plaintiff to show the defendant has no valid defence would impose a burden on the plaintiff to demonstrate in a summary proceeding that its claim is certain to succeed, failing which the plaintiff's case would be dismissed without a trial. This raises a serious question of access to justice.

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Of course, Canadian judges and legislators have traditionally refused to deny plaintiffs access to courts except where it is clearly shown by a defendant that the plaintiff cannot succeed. The requirement that the plaintiff show that there is no valid defence would turn this important concept completely on its head. In the society's view, the requirement to show no valid defence is unnecessary and unwarranted.

The second point, balancing interests at stake: The public interest in protecting the defendant's expression should certainly enter into the equation, as provided for by section 137.1(4)(b). However, rather than balancing this against the public interest in permitting the proceeding to continue, as proposed in Bill 52, the society takes the view that the importance of the plaintiff's access to

justice rights, and in particular the public value associated with access to justice where serious reputational interests are at stake, should be considered.

The fundamental value of access to justice is compromised when a lawsuit is peremptorily dismissed for the sake of protecting freedom of expression. The legislation should reflect this compromise and make it clear to the parties and to the presiding judge precisely what competing values are at stake.

I'll be brief with the third point. It relates to substantive changes to the law of defamation in two respects. First, Bill 52 proposes to amend the Libel and Slander Act to extend the defence of qualified privilege to persons with a direct interest in a matter of public interest communicating to others with a direct interest, even if media are present and report on it.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Brian Gover: We say that's inconsistent with recent jurisprudence from the Supreme Court of Canada.

Bill 52 also proposes to require that the plaintiff demonstrate the seriousness of the harm suffered or likely to be suffered by a plaintiff as a result of the expression of the defendant. It's a basic principle of defamation law that harm from a defamatory statement can be presumed, because our courts have recognized for many years that it's frequently impossible to ascertain who has heard the defamatory comment.

We say this isn't the place to modify the substantive law—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Gover. To the government side, to Mrs. Martins.

Mrs. Cristina Martins: First of all, thank you very much for your deputation here today and for your presentation. I guess, as we all know, the intention of this bill was to protect people's freedom of speech and their right to have their opinions heard while ensuring that they do not have a licence to slander. In your opinion, does this bill accomplish that goal?

Mr. Brian Gover: We think that you could recalibrate the balance. That was the point of the first two points of my submission today. We say that overall, as I've said, there is a laudable public goal behind this legislation, but here we need to think about denial of access to justice to plaintiffs and we need to recalibrate somewhat by recognizing the public interest and the ability to access the courts.

Mrs. Cristina Martins: And do you think that this bill would level the playing field between groups but not guarantee that freedom of expression will always win over potential slander reputation?

Mr. Brian Gover: We think that, with the relatively minor revisions that we are advocating, the bill could do that, yes.

Mrs. Cristina Martins: Okay. No further questions at this time.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Martins. To the PC side, Mr. Hillier.

Mr. Randy Hillier: Thank you very much. It was a pleasure reading over your previous submissions back

since 2010 regarding the process of this bill. If you could reiterate—you're suggesting that the bill would achieve its goals of allowing freedom of expression without denying access to justice if the no-valid-defence clause was struck out?

Mr. Brian Gover: That's right.

Mr. Randy Hillier: As well as striking out the clause for extending qualified privilege?

Mr. Brian Gover: We think that's important as well, wes.

Mr. Randy Hillier: And the third one, if you could reiterate for me?

Mr. Brian Gover: Well, the second point had to do with the balance in interests at stake. There, we think that because of the great concern that legislators in court have always had about denying access to courts, we ought to change that so that you balance, in terms of the public interest, also the plaintiff's ability to access the court as part of the public interest equation, if I can put it that way.

Mr. Randy Hillier: Okay. It would be very difficult in a piece of legislation to describe that. Have you got to how to balance those competing—

Mr. Brian Gover: Thank you for the question. We do think that in relation to Section 137.1(4)(b), where the balancing has to do with "the public interest in permitting the proceeding to continue" that part of the consideration there should be: "the public value associated with access to justice where serious reputational interests are at stake."

Hearing the previous deposition makes me think of a concrete example where you could see where there could be some very valid interest in respecting and protecting reputational interests. We say that can be accounted for in that public interest calculation.

Mr. Randy Hillier: What about a clause or an addition in there about incorporating the "bad faith" into the discussion of the public interest and also "bad faith." Would that be another way to achieve that?

Mr. Brian Gover: In my view, that would be another way to achieve that, and here we're really concerned—the nub of this concern on the part of the Legislature, we recognize, is abuse of lawsuits being brought and striking the right balance, recognizing that both plaintiffs and defendants can abuse the process of the court.

Mr. Randy Hillier: And is "bad faith" a phrase in the legal world that is readily understood, easily defined and has broad acceptance?

Mr. Brian Gover: The law is replete with examples where courts—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. To the NDP side: Mr. Singh.

Mr. Jagmeet Singh: Thank you very much, sir. You can finish the answer to that question, if you like.

Mr. Brian Gover: Yes. Mr. Hillier's question had to do with whether building "bad faith" into the calculus of the balancing interests here would provide a means that would have legally established metrics that we could call upon.

I work in a profession where we are always looking for some prior example that we call a precedent, and the answer to the question is that in fact the phrase "bad faith" has abundant meaning in our law and our legal tradition.

Mr. Jagmeet Singh: There has been a great deal of jurisprudence where judges have looked at cases, and at the conclusion of the case have determined in their decision that this was clearly an example of a lawsuit that was frivolous in nature. Some of those decisions were, I think, some of the impetus behind why this sort of legislation was brought forward; that there are numerous accounts of people bringing forward frivolous lawsuits just to silence someone.

One of the major concerns that you brought is that common law has established a certain test, and it seems to be completely reversed in this. If you could just explain that a bit more and how that is being reversed.

Mr. Brian Gover: Yes, and that had to do with my first point about imposing an unduly high burden on plaintiffs to show that the claim was—as we say in the handout—indefensible, that there could not possibly be a valid defence to the claim. We have said that that simply goes too far.

Although, as you have pointed out, there have been abundant examples of courts saying that a lawsuit was brought for an improper purpose, at a preliminary stage, where we're talking about pre-emptively dismissing a lawsuit that may have some validity, we say that it simply goes too far to require a showing of both substantial merit in the suit and also no valid defence because that simply sets the bar so high that we end up denying access to courts. That's what I meant when I said that it takes the approach that courts and legislators have traditionally taken and puts it on its head.

Mr. Jagmeet Singh: Thank you for that.

One of the key components, and I think one of the most important components of the bill—something that will offer a great deal of protection—is the pre-emptory mechanism of dismissing actions when it can be shown early on that this is something that is being brought in an abusive manner. I think that is the key ingredient that allows for the protection of public participation.

Do you have an alternative suggestion, in that mechanism, in that process of being able to dismiss a claim early so that it doesn't deal with—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh, and thanks to you, Mr. Gover, and to your colleague for your deputation on behalf of the Advocates' Society.

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NORTHWESTERN ONTARIO MUNICIPAL ASSOCIATION

TOWN OF ATIKOKAN

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Mr. Dennis

Brown, mayor of the town of Atikokan. Your Worship, welcome.

Mr. Dennis Brown: Thank you.

The Chair (Mr. Shafiq Qaadri): You've seen the protocol: five minutes, and then three minutes by rotation. I invite you to please begin now.

Mr. Dennis Brown: Thanks for giving me the opportunity to meet with you today to provide input on Bill 52, which, if passed in its present form, will have a devastating effect on not only Atikokan, the community I come from, but also on many similar communities right across northern Ontario.

As the cover of my presentation indicates, I'm here today speaking not only on behalf of the town of Atikokan but on behalf of the Northwestern Ontario Municipal Association, NOMA, which represents the interests of 37 municipalities, from Kenora and Rainy River in the west to Hornepayne and White River in the east.

NOMA's mission is to provide leadership in advocating regional interests to all orders of government and other organizations. I have had the privilege of serving as the president of NOMA on three different occasions—1985-86, 2004-05, and part of 2010-11—and since our president, David Canfield, is involved in a regional NOMA conference today in Thunder Bay, I am speaking on his behalf and that of the entire NOMA board.

I should also add that both NOMA and the town of Atikokan have worked closely with our area First Nations over the years. They too want jobs in northern Ontario, and I'm happy to say that I have the former chief of Fort William First Nation, Georjann Morriseau, here with me today. She's sitting at the back. She is presently working on aboriginal affairs for Resolute.

As the mayor of the town of Atikokan, I attended a meeting in February of this year—along with Mayor David Canfield, president of NOMA, as well as Mayor Alan Spacek, president of FONOM, and other business and municipal representatives—with the Honourable Madeleine Meilleur, Attorney General, in order to try to convince her and her staff that Bill 52 in its present form is a direct attack on those who create jobs in this province and the 170,000 Ontario citizens who work directly and indirectly for Ontario's renewable natural forest products.

The forest industry has been the backbone of the economy in northwestern Ontario, including Atikokan, for many years. Wood and paper industry jobs contribute greatly to our standard of living. There is no doubt that the industry has had its challenges in the last few years, but it is now poised for growth.

The next two paragraphs contain a story about our town. We were once a town of 7,000 people; now we're 3,000 people. We've had two major upsets in the last 30 years or so: In 1980, the two mines closed and 1,100 people lost their jobs, and in 2008, with the downturn of the forest industry, two mills in town closed.

Now, things are on the rebound. The community is very excited and thrilled that Resolute Forest Products has built a new mill in town, a \$50-million investment to

provide 90 direct jobs in the community and the sawmill and to sustain and grow employment in the woodlands operations, most notably in harvesting and hauling. Altogether it's probably 200 jobs when you look at the things that take place.

However, Resolute is the target of ongoing campaigning by a major proponent of Bill 52: Greenpeace. This radical group made numerous claims about the company that were found to be totally false. In 2013, they even retracted their incorrect statements, but the damage was already done. The effect of slick market campaigns like theirs has been to discourage customers of forest products from Ontario and to threaten Ontario jobs. That is happening right now. Companies from Ontario are going to Tennessee, and you'll see this later on in one of my handouts.

Since apologizing, Greenpeace has continued with further fabrications, as well as outrageous demands on the forest industry. It is important to note that their demands, if enacted, would put thousands of jobs and entire communities at risk.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Dennis Brown: Okay. So I won't say too much more. We're asking for about 50 words, on page 7, in amendments to the bill. We would like you to have the bill only apply to those groups that have an operating budget of \$100,000 or less. That's one thing. The present lawsuits that are taking place should still be able to take place whether this bill passes or not; and, on page 8, public interest—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Brown. I now offer the floor to the PC side. Mr. Fedeli.

Mr. Victor Fedeli: Your Worship, welcome to Queen's Park. Because they only gave you five minutes to speak, I would like to give you my three minutes to continue, Mayor Brown, with where you were. Please use my three minutes.

Mr. Dennis Brown: Okay. I've talked about the situation that's going on in the forest industry with Greenpeace, targeting customers of Resolute. Resolute is losing business. Greenpeace is also targeting the boreal forest that goes right across Canada. We know that the federal and provincial governments are doing everything they can. We attend the meetings in Ottawa. The federal government is putting out this brochure here that's going to all the embassies across the world, talking about how the federal government is supporting the forest companies and how we're trying to keep the jobs in Canada. The provincial government has this nice brochure, Quick Facts about Ontario Forestry—I think you've all probably seen it—so the provincial and federal governments are helping. We just can't understand why we would want to consider a bill like this at this time. The timing is certainly not right.

If you look at pages 9 and 10 in my handout, it's a summary of some of the things I've said. If you go to page 11, you will see that there is information there from Resolute and from Georjann Morriseau, who is with me. "First Nations and aboriginal peoples"—the middle

paragraph—"among others have expressed great frustration with the actions and tactics of Greenpeace and other like-minded activists." Greenpeace is only one; there are whole other groups, as most of you know, that are creating lots of problems.

At the very top of the page: "very deep cuts to the supply of wood to companies that could well lead to the closure of many additional sawmills and pulp and paper mills, impacting hundreds if not thousands of Ontario jobs."

On page 12, you have a resolution that the NOMA organization passed in April of this year, and I have highlighted one part: "Further that the aforementioned organizations cease and desist all campaigns targeting consumers of renewable forest products sustainably harvested from Ontario's boreal forest region as trees are the only renewable building product."

Mr. Victor Fedeli: Mayor Brown, on page 9 you talk about the fact that Bill 52 undermines the forestry sector. Am I hearing from you that you are in favour of the bill, in general, to protect what we would call "the little guy," but not so much—is that why your amendment is for the \$100,000 budget or larger?

Mr. Dennis Brown: That's right. We think there may be certain cases where the average citizen may have something to talk about, and that's fair enough, but when we know what's happening now—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. The floor now goes to Mr. Singh of the NDP.

Mr. Jagmeet Singh: Thank you. I guess your concern is that larger groups that are activists or express their concerns about a particular project or particular issue might be overly protected by this bill. Is that your concern?

Mr. Dennis Brown: That's the way we see it, yes. As we know, Greenpeace isn't a small organization. I have it in there about the over \$3-million investment and so on, and they're worldwide. They're looking for a cause. We just think that for them to pick on northern Ontario is just not right. I think that all of you people here want jobs in our province. The forest industry is turning around now. We have a golden opportunity, so we have to work together and keep the jobs coming to Ontario, especially northern Ontario. We depend on industry like forestry.

Mr. Jagmeet Singh: In general, though, the idea of protecting people's right to participate is something that you support, and the idea that they might get additional protection because they don't have the same resources makes sense to you. You're just concerned about who this bill should apply to and who it shouldn't apply to.

Mr. Dennis Brown: Yes. We think there's merit for the small person, the person who's making less than \$100,000 a year. Maybe there are some cases where they could come forward when they have something to say, but just to say it so that you can disturb the economy in northern Ontario doesn't make sense.

Mr. Jagmeet Singh: Are you aware of the actual impact in terms of the economy? Is there something that

you know from your city or something you know from Resolute that provides some evidence to say that there is an economic impact based on protests?

Mr. Dennis Brown: Yes. In Atikokan, we have about 1,800 jobs. I'd say probably 600 of them are related to forestry. So it's very important.

Mr. Jagmeet Singh: No, I certainly understand that forestry is important, but do you know if people who express their opinion, if that's negatively impacted employment? Do you have any evidence to suggest that, or are you just thinking that might happen?

Mr. Dennis Brown: No, it's happening now. If you go to some of these pages here, you'll see—page 25, for example.

Another company, ForestEthics, has been able to take jobs away because of Victoria's Secret; the customers don't want Victoria's Secret to use any wood products from the boreal forest. So they go to other restrictions where the rules and laws aren't the same. Ontario is already set up with the strictest sustainable regime in forestry around, so that has taken care of most things. We don't really think that there's a need—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. To the government side: Mr. Thibeault.

Mr. Glenn Thibeault: Thank you, Your Worship, for being here. Being a proud northerner from Sudbury, and I know my colleagues from across the way, from North Bay and Parry Sound, we are all pretty proud of calling ourselves northerners, until you get to Atikokan and realize that we're quite south. You really are up there in the north.

A couple of questions relating to your presentation: You used the words "present form" quite a bit. From my understanding, are you in favour of the bill with the amendments that you were talking about? Is that what you would like to see, moving forward?

Mr. Dennis Brown: I think our first preference would be to just scrap the bill, but I think it's probably too late for that. We don't think the bill is necessary. The situation is already in place to cover all these different situations. But if you're going to go ahead with the bill, we really hope that you'll make those—

Mr. Glenn Thibeault: Because your amendment is talking about using something that was also brought forward by the forestry industry, which is talking about operating budgets that are less than \$100,000. There are concerns, though, Your Worship, that having that legislation apply to only certain groups with smaller financial backing would really restrict free speech. So would you be able to give me your thoughts on that piece? If we're only allowing it to be smaller groups, do you feel that we're restricting free speech by doing so?

Mr. Dennis Brown: I think in most cases the smaller groups will co-operate and work with us to create jobs, but when we have large organizations, like Greenpeace, they have to find a cause and they go out and do things to create a cause, and therefore it's hurting the economy in northern Ontario and it's hurting the economy in Quebec.

We know that. We think somehow that has to be corrected.

Mr. Glenn Thibeault: So what you're saying is that free speech needs to be corrected? Can you clarify that for me?

Mr. Dennis Brown: No, I think there's a way for any group, if they have a problem, to go to the court system now, but for the average person making less than \$100,000, if they have a specific cause, then I think they should be given an opportunity. But groups that are financially secure and have lots of assets can go through the court system to do what they have to do.

Mr. Glenn Thibeault: Great. Thank you, Your Worship.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mayor Brown, from the town of Atikokan, for your presence and your deputation.

UNIVERSITY OF WINNIPEG

The Chair (Mr. Shafiq Qaadri): Our final presenter of the morning is from the University of Winnipeg, Professor Marilou McPhedran. We invite you to please come forward.

Welcome. You have five minutes to make your opening address, and rotation of questions by each party afterward. Please begin now.

Ms. Marilou McPhedran: Could you wait until I sit down, please, before you start the time?

The Chair (Mr. Shafiq Qaadri): The time has started, thank you. We've actually waited for you. You were to be here, in fact, at 9:30, and we've waited for you since then. Thank you.

Ms. Marilou McPhedran: Which I very much appreciate, and I'd be happy to explain when the timer's not running.

Members of the Standing Committee on Justice Policy, thank you for this opportunity to brief you on a particular type of SLAPP suit, of which I have extensive personal knowledge. I will table my full CV.

The two pins on my suit reflect contributions as a human rights advocate: the Order of Canada in 1985 for co-leadership in strengthening equality guarantees in the Canadian Charter of Rights and Freedoms, and the Persons Case medal.

On the plane last night, I was reflecting on why I left Ontario after more than 30 years. This SLAPP suit contributed significantly. In June 2001, considerable media attention was given to the release of the independent report of the Special Task Force on Sexual Abuse of Patients. In September, the Ontario Medical Association sued me for my opinion, featured on the editorial page of the Globe and Mail, summarizing the findings of the independent task force that I was appointed to by the then Minister of Health in Ontario to chair.

The OMA did not sue the Globe; only me. Over the years that this SLAPP suit dragged on, over 100 doctors—in various ways, in various fora—urged the OMA to stop. As a single mother, I faced my sons asking

for years if we were going to lose the house, and my honest answer was, "Yes, if the OMA wins."

Five minutes cannot convey the extent of the silencing effect that this SLAPP suit had on awareness and accountability for sexual abuse of patients, estimated in 2000 to be affecting over 200,000 patients of regulated health professionals in Ontario. But a cursory review of media coverage in those years would seem to indicate libel chill. I was silenced for five years, and other potential spokespeople told me they were silent because of the SLAPP against me.

Early in the case, my lawyers at the time called to tell me that they had walked out of a meeting with the other side because the OMA lawyer referred to me as "that bitch." Drawing from the official transcript of a portion of examination for discovery on January 8, 2003, by the OMA lawyer, journalist Patrick Watson produced a script, without changing any of the words spoken, for public readings done by actors, including Sonia Smits, at events for raising awareness and funds for my defence.

The SLAPP suit ended in a draw the night before the public trial was to commence in October 2006. I still carry a mortgage as a result of this SLAPP suit, even though many people donated to my defence fund, and my lawyer donated many hours of his expertise, working for more than two years before being paid for his services.

You have before you the article—I will table the article in question—and yes, I know that I stand the risk of being sued again for speaking here today. That is one reason why our democracy needs this law. Our democracy is strong enough to allow for dissent, different points of view and to protect freedom of expression for those who have money and those who do not have money.

This case ran from 1998 to 2004, when the Ontario Court of Appeal ruled against the doctor and the OMA. and the Ontario Nurses' Association, which had joined the OMA in the appeal. The CPSO decision—contested-stated in part: "The practice of medicine in Ontario is a privilege which brings with it certain obligations both to their patients (to refrain from sexual relations), the public, and to fellow members of the profession."

By contrast, from a factum filed by the OMA: "The OMA submits that the freedom of the individual to enter into consensual sexual relationships as he or she desires is protected by section 2(d) of the charter. By restricting physicians' freedom to enter into personal relationships of this kind, the mandatory revocation provisions violate section 2(d)."

My last sentence: The standard of zero tolerance of sexual abuse referenced in the OMA decision, referenced in numerous speeches by the current Minister of Health. is the policy of the RCMP, the Vatican and UN peacekeeping forces-

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. McPhedran. We'll now offer the floor to the government side, to Ms. Vernile.

Ms. Marilou McPhedran: —and is now a global standard, first set out by the 1991 independent task forceThe Chair (Mr. Shafiq Qaadri): Thank you.

Please, go ahead.

Ms. Daiene Vernile: Ms. McPhedran, thank you very much for coming and speaking to us. You and I have three minutes to chat. How much more time do you have in your delivery there? Perhaps we can give that to you to finish.

Ms. Marilou McPhedran: Thank you. I very much appreciate your courtesy, and I also appreciate the work you've done on the committee on sexual violence and harassment.

Ms. Daiene Vernile: If we have time, we'll talk about that, but go ahead and finish.

Ms. Marilou McPhedran: The standard of zero tolerance of sexual abuse is now a global standard, first set out in the 1991 independent task force I chaired, commissioned by the CPSO. In January of this year, the Honourable Dr. Eric Hoskins appointed me to co-chair and then chair his minister's task force on the prevention of the sexual abuse of patients and the RHPA. My remarks today relate to the 2015 task force only insofar as they refer to the public record. The report of this independent task force is under embargo.

I had hoped for enough time to read an excerpt from the examination for discovery in this SLAPP suit, but the

time you have allotted does not allow.

Thank you. I welcome your questions.

Ms. Daiene Vernile: We've got two minutes left for you and I to chat. I just want to ask you a little bit more about your case for the record, for people who may not be familiar with it. Just explain to us what happened to

Ms. Marilou McPhedran: Over the course of the five years, every time I was called to comment on cases related to the sexual abuse of patients, I had to decline. I was told by reporters, and I was also told by individuals who could be spokespeople, that they decided not to respond. Often, the coverage did not occur in a full way because nobody would go on the record, because of the chilling effect of what had been directed at me.

Ms. Daiene Vernile: You referenced the Select Committee on Sexual Violence and Harassment. I'm honoured to be chairing that committee. This issue has come up a number of times, by the way.

The intention of this bill that we are presenting is to protect people's freedom of speech. Do you believe that it does that?

Ms. Marilou McPhedran: I believe it's an essential component to doing that, yes, and I also believe that it's a reform of law that is over 100 years old. It's all precharter, and indeed, it's essential for freedom of expression. What's not often understood is the difference in resources. If you look at the pattern in SLAPP suits, it's the deep pockets that use the legal system to try and silence, often, those who do not have deep pockets.

Ms. Daiene Vernile: We're going to be tabling our final report in December of this year, so I hope that you get a chance to read it, and we'd be happy to hear your

feedback on that. Thank you very much.

Ms. Marilou McPhedran: Thank you for your interest.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Vernile. To Mr. Hillier, of the PC side.

Mr. Randy Hillier: Thank you very much, Marilou, for being here and for making that presentation. Unfortunately, under this government programming motion, everybody only has five minutes to make presentations.

Ms. Marilou McPhedran: I understand.

Mr. Randy Hillier: However, it is an important bill. I'm not sure if you were here when an earlier presenter from the Advocates' Society was discussing the "no valid defence" component and bad faith. The assertion and the argument that was put forward was that the bar was being set too high under the present bill, and the "no valid defence"—I think we can probably say in any activity, you can always find some lawyer who can find some defence. We want to balance freedom of speech and expression, but also access to justice. We don't want to see cases that have merit be summarily dismissed. The comment that we were hearing was that the bar would be set too high under the present clauses, and that cases with merit would be dismissed. I'd just like to have your comments, seeing that you are a lawyer.

Maybe also some of the discussion had been centred around incorporating a clause that included bad faithpublic discourse, or in the public interest, but also with

bad faith. If you could expand on that.

Ms. Marilou McPhedran: Any piece of legislation puts a great deal of trust in the expertise of judges. The notion of trying to determine bad faith in advance probably is not workable at all. It's the evidence, case by case, that can be presented.

I think that the critical component here is to remember that libel and slander, the notion, is about reputation. The idea that there cannot be an open discussion in our society that is moderated by rules of fairness that are modernized—moderated and modernized rules of fairness. What's important is that the multiple points of view, perspectives and concerns find a place-

Mr. Randy Hillier: No, I get that. We're all for free speech, but we do know that legislation—the words in it are powerful, and judges have to make their determinations based on the legislation that we've crafted here. My question is: Do you consider that the threshold is—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr.

Hillier. The floor now passes to Mr. Singh.

Mr. Jagmeet Singh: Thank you for being here, and sorry about the short time. I echo my colleague's concern that because of the government programming motion, we're limited, so I'll quickly get to the question.

Building on my colleague's question, I absolutely think that we need Bill 52 as well, and you've made those comments. I think it modernizes the law in a lot of ways. Certainly there has been an imbalance. People with deep pockets are able to sue people who don't have deep pockets, and I think that's unfair.

The question that I think my colleague is bringing up, and I think it's an important question, is that there's one component that says the plaintiff—so if I'm bringing a libel suit against someone, I have to show that the person who is defaming me has no valid defence whatsoever for bringing that up. I guess a concern is that—if someone is legitimately going out there and smearing my name and they can come up with some defence, then I can't bring the libel against them. Does that set it too high, do you think, that one component?

Ms. Marilou McPhedran: No, I don't, because once again, I think there's a determination of what that actually means: "in bad faith." We've already entrusted the judicial system to make those kinds of determinations.

I do want to also observe that we're really not talking. in most cases, of people suing people; we're talking about corporations suing people.

Mr. Jagmeet Singh: This is true. That's a good distinction. It's rare that it's between people—

Ms. Marilou McPhedran: And when it is people suing people, it's rich people suing other people who don't usually have the capacity to defend.

Mr. Jagmeet Singh: I think there's definitely an equity issue, and I think that's why it's so important for us to have this bill. So thank you for that.

Any other concerns that you would like to bring up in your 60 seconds left?

Ms. Marilou McPhedran: I wanted to make the presentation in this personal way this morning because so often, once a SLAPP suit commences, the silencing kicks in immediately and there are very few ways to know what's really going on. For something like this to drag on for five years and the fact that it's borne on an individual basis or, in the case of non-profit organizations, this notion of the public interest is a critical component of our democracy. Whether the criticism that's being directed against the corporations or the rich and powerful individuals is something that is held sincerely on an individual basis or more collectively through civil society, nevertheless we are talking about critical components of freedom of expression in our democracy.

Mr. Jagmeet Singh: Thank you very much. Instead of getting rudely cut off, I think we'll just wrap it up there, then. Thank you so much.

Ms. Marilou McPhedran: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh, and thanks to you, Ms. McPhedran.

I should also just mention that we are trying to track down-you mentioned that you had submitted the original article. I don't think we have it as a committee, so you're welcome to resubmit it, at least electronically.

Ms. Marilou McPhedran: I'd be happy to.

The Chair (Mr. Shafiq Qaadri): In any case, thank you for your presence.

The committee is now in recess till this afternoon at 2 p.m.

The committee recessed from 1008 to 1400.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I call the Standing Committee on Justice Policy to order. As you know, we're here for an afternoon session on presentations on Bill 52, An Act to amend the Courts of Justice Act, the Libel and Slander Act and the Statutory Powers Procedure Act in order to protect expression on matters of public interest.

We have a number of presenters, carrying us, probably, right till 6 p.m. Each presenter will be offered five minutes in which to make their opening address, to be followed by three minutes from each party in rotation—questions and answers.

MR. RICHARD JOHNSON

The Chair (Mr. Shafiq Qaadri): Our first presenter is Mr. Richard Johnson. Welcome, Mr. Johnson. I invite you to please begin, officially, now.

Mr. Richard Johnson: Thank you very much. I would like to thank the blue-ribbon panel that wrote the 2010 anti-SLAPP report; their report rings true. The case that I was involved with is proof that many of their suggestions actually are accurate. I'd like to thank the CCLA for their continued efforts to expand the definition of what constitutes acceptable public speech, as well as the Attorney General's office and this standing committee for your efforts to protect free speech.

I was sued by the former mayor of Aurora in 2010 for \$6 million. I was not sued for defamation, but rather, I was caught up in a legal web. She initially thought, I suppose, that I was the moderator of a political blog, without any evidence. When she realized that there was no evidence, she changed the accusation against me to suggest that I had encouraged others to defame her. What happened was that some anonymous people had made comments that she found unacceptable; therefore, she and her supporters on council agreed to sue three named people because of the comments of three unnamed people, as well as a software company, for \$6 million, with the use of town funds.

I don't want to concentrate on it too much because of the time constraints here. I want to focus on a very, very important point that I think this bill is missing. What that point is that governments cannot sue, according to the Charter of Rights. What I have witnessed in a number of cases is that there are local government that are, apparently, intentionally circumventing the spirit and the intent of the Charter of Rights. I prepared a report that I hope will be reviewed by the appropriate people and that the key pieces of information will be shared with this committee.

I will very quickly summarize what I provided to you. In Georgina, Mayor Grossi and his council sued a former town employee for commenting on matters of public importance. I have provided the press release in which they stated that the lawsuit in question "was never a personal suit between Mayor Grossi and Mr. McLean." It had to be personal, by definition, because the law does not allow governments to sue. So what the town did is, they said, "We will fund a third-party lawsuit, fronted by the mayor." This is, for all intents and purposes, a government action that is being reshaped to look like a private lawsuit, which it wasn't.

The same thing happened in our case. Master Hawkins, in a discontinuance cost ruling in our case, ruled that Mayor Morris had conducted a SLAPP. The summary of his reasoning is in a report here. The interesting thing about our case is that when we tried to have our case discontinued at a motion to strike, Mayor Morris, through her lawyer, argued that this was, at all times, a private lawsuit. She also removed the words "acting in her capacity as mayor" from the statement of claim.

So she, Phyllis Morris, was suing, with the use of the town's lawyer who signed the only affidavit, with the use of the town's money, with the use of a council resolution, and saying that it was a private lawsuit. She was suing her political rivals, including myself. I helped her get elected and I made the mistake of trying to hold her accountable. She didn't appreciate that.

Further, when the town cut funding of her private lawsuit—the new council cut funding—she sued the town for \$250,000 and claimed that, at all times, this was a government action, that her lawsuit was a government action, so she had the completely opposite argument. In another legal case that she was involved with, she also stated that it was a government action. So she's trying to have it both ways. Is it a private lawsuit or is it a government action?

The most important case that I would ask that you read and concentrate on is the Dixon v. Powell River case in BC. In that case, the judge ruled that the defendant city of Powell River lacked any legal basis or right to bring civil proceedings for defamation—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Richard Johnson: I would ask that you concentrate on the Dixon v. Powell River case. In there, it says that a government cannot sue for defamation or bring other proceedings of similar purpose or effect or threaten to do so. We need to clarify the law so that governments cannot sue for defamation by funding third-party lawsuits against concerned citizens who are speaking about matters of public importance.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Johnson. The floor now goes to the PC side. Mr. Hillier.

Mr. Randy Hillier: Thank you, Mr. Johnson. In your particular case, the suit was eventually dismissed, and I believe that you were ordered—

Mr. Richard Johnson: It was discontinued by Phyllis Morris—

Mr. Randy Hillier: It was discontinued.

Mr. Richard Johnson: —because she lost the Norwich motion, which she was trying to compel us to—

Mr. Randy Hillier: And you were awarded costs?

Mr. Richard Johnson: Enhanced costs, and we still recovered approximately half of the \$100,000 that we spent.

Mr. Randy Hillier: Right. The purpose of this bill is to prevent abuses; by and large, to prevent people abusing the courts and the justice system to further an end that otherwise would not be appropriate or lawful. But I think, unfortunately, things can always be abused.

You're suggesting that this bill is lacking in that it doesn't specifically state your assertion that governments can't sue for defamation?

Mr. Richard Johnson: I noted in the blue-ribbon panel recommendations from 2010 that they specifically stated that they did not recommend a ban on governments being able to fund third-party lawsuits. I believe it was words to that effect. That, I think, is a critical error because there's no mention of the Charter of Rights and there's no mention of—there's a quote here, as I just mentioned, from Dixon v. Powell River from a judge that says that not only can governments not sue, but they can't "bring other proceedings of similar purpose or effect."

There's another case called Montague township, and there are some critical quotes on pages 15 and 16.

Mr. Randy Hillier: I was in the courtroom at Montague. I was assisting Donald Page in the action by the township against him.

Mr. Richard Johnson: So you'll appreciate what the intent was.

Mr. Randy Hillier: I do appreciate it, and I do appreciate that many of these SLAPP suits are initiated by municipal governments or to silence criticism. The bar is set a little bit higher presently for governments, such as in the Montague case. The judge—

Mr. Richard Johnson: Absolutely. It's patently antidemocratic for governments to be silencing people. Even if statements are made that are harsh or may be slightly factually wrong: If they're not done in malice, a government cannot sue.

Mr. Randy Hillier: One of the things that we're looking at is making this freedom of expression and having this change—are we going to open it up for abuse from the other side, such as what we heard this morning, from well-funded environmental groups and whatnot being able to say anything they want with impunity and other companies or other individuals not having the ability to defend themselves?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. The floor now passes to Mr. Singh of the NDP.

Mr. Jagmeet Singh: Thanks for being here. I just want to touch on this matter. So I think your specific concern, as my colleague just stated earlier, is around closing this gap that you think exists with the current legislation. The gap allows for what—your understanding of the charter is—governments are not allowed to do?

Mr. Richard Johnson: Governments are not allowed to sue for defamation. What they are doing is a shell game.

Mr. Jagmeet Singh: It's going through a third party. I understand what you're saying. They're going through a third party. In your example that you provided, on one hand the argument was that this was a private case, but on the other hand the funding was all raised in a public manner

Mr. Richard Johnson: Yes. There are legal precedents that have already been stated in courts that not only can't governments sue, but they can't cause a similar

action, and governments include locally elected municipal governments. They cannot sue for defamation.

On top of that, the code of conduct says that public office cannot be used for personal gain. So whether they argue that it was a private lawsuit or a public lawsuit, either way they should not be launching these lawsuits.

Mr. Jagmeet Singh: Are there any jurisdictions where you've seen this issue specifically dealt with, where there is perhaps other anti-SLAPP legislation where this particular area has been addressed?

Mr. Richard Johnson: I don't know if this particular issue has been addressed, but it has clearly been raised in the cases that I've presented and I don't think—I'm not sure if it has been addressed as of yet.

Mr. Jagmeet Singh: In your research, did you come across perhaps any language that you would like to see in the legislation that would cover this particular exception or experience?

Mr. Richard Johnson: I think I'd leave the language to the lawyers and possibly the blue ribbon panel. Peter Downard is very distinguished, and he's a specialist in this area. All I would ask is that the specialists look at the cases that I've provided and the logic behind them. They are all similar cases of people trying to be involved in the democratic process and being absolutely crushed by their local governments.

Mr. Jagmeet Singh: I see. Okay. No further questions. Thank you very much.

The Chair (Mr. Shafiq Qaadri): To the government side: Mr. Potts.

Mr. Arthur Potts: Thank you very much, Mr. Johnson, for being here and detailing some of the experiences you've had. The purpose, I believe, of what we're trying to do here is to suppress people using economic muscle to silence critics, whether it's frivolous or where there's no harm in what was happening.

Would you say, regardless of where the lawsuits are coming from, whether it's municipalities, other governments or other entities—developers—do you see the mechanisms in this act which would have protected you had it been in place when you started?

Mr. Richard Johnson: I think that the act, on my reading of it, is definitely a step in the right direction. I think you definitely have to address the imbalance when people are trying to participate concerning matters of public importance and when other people want to shut them up using their position of power and resources.

Mr. Arthur Potts: I think the objective is a 60-day window, an expedited process—

Mr. Richard Johnson: Absolutely.

Mr. Arthur Potts: —so you won't be raising hundreds of thousands of dollars of defence costs against something that is frivolous.

Mr. Richard Johnson: Absolutely. The estimate of our case was \$250,000 to get to court, and, quite frankly, I could have easily been bankrupted. I was innocent; I had never done anything. False accusations were being made against me. I was sued without warning. I could

have been bankrupted, despite my innocence, just in my defence.

Mr. Arthur Potts: Yes. So you don't really know in detail whether this would have covered you or not, but you believe it's going in the right direction, but no language you'd want us to—

Mr. Richard Johnson: What I know is that the more tools that the court has, the better it is for the defendants. The judges in two of our rulings slammed Phyllis Morris for the way she was using the courts. This ruling is just the tip of the iceberg; the Carole Brown ruling before it, the Norwich motion, is equally as damning.

I could tell you more about this story, but we don't have the time here. It's incredible how a public official treated people who—I actually helped get her elected. I made the mistake of trying to hold her accountable.

Mr. Arthur Potts: I believe that we're expected to have a much thicker skin, so even if things, as you say, are said in the heat of the moment and they may not be absolutely true, to be able to use the muscle of your tax dollar against you strikes me as—

Mr. Richard Johnson: And as the court says, governments have other means to address issues that they disagree with, and litigation should not be the first option. Mayor Morris issued a mayoral proclamation after suing me, and the proclamation called for the community to use restorative justice. Two weeks after suing me without warning for \$6 million for something I didn't do, she's calling on the community to avoid litigation by all means possible. She refused to not only use restorative justice but any reasonable attempt to terminate this case—then she sued the town for \$250,000 to recover costs that they did not cover, and then later, a year after she launched that lawsuit, she said, "Oh, it's come to light that it's only \$27,800." That lawsuit is continuing, and she's saying that it was at all times a government action.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts, and thanks to you, Mr. Johnson, for your deputation and your written submission.

MS. ESTHER WRIGHTMAN

The Chair (Mr. Shafiq Qaadri): I will now move to our next presenter. Ms. Wrightman, are you there by teleconference?

Ms. Esther Wrightman: Yes, I am.

The Chair (Mr. Shafiq Qaadri): Thank you. You have 10 members of provincial Parliament listening to you. You have five minutes in which to make your opening address, to be followed by questions in rotation. By the way, where are you calling from?

Ms. Esther Wrightman: Saint Andrews, New Brunswick

The Chair (Mr. Shafiq Qaadri): Thank you. That's what we were trying to figure out. Welcome, from New Brunswick. Your five minutes begin now.

Ms. Esther Wrightman: Thank you for allowing me to speak. As someone facing a SLAPP suit, I am relieved to see Bill 52 finally reach this stage in enactment. Even

so, I'm frustrated that it provides no protection for those presently facing lawsuits. I ask that this body strike the amendment made last December, which removed the retroactive clause, so the bill honours the statement made by former Attorney General John Gerretsen to MPP McNaughton in 2013. "If Bill 83 is passed," wrote Mr. Gerretsen, "the rule will apply to suits brought before the bill comes into force...."

Commenting on the amendment that contradicts and guts the bill, Gerretsen had this to say: "Obviously the bill is weaker than the one we originally introduced," while adding, "I have no specific comment as to why the retroactive protection is gone except for it probably shouldn't be gone." I agree completely: It shouldn't be gone.

To say I'm a married mother of two, formerly from rural Ontario until over 200 wind turbines arrivedsaying this doesn't offend anyone. Notice I deliberately left out my opinion and anything that might stir emotion and judgment in others. However, when I say, "The wind energy company NextEra dominated my homeland, destroyed wildlife in its habitat, struck anger, fear and terror in my community so much so that residents called them 'next terror' in daily conversation," people begin to say, "Esther, you can't use that word, 'terror.'" "Why?" I ask. The answer I get is "Because that's pushing it." "Use something less controversial," I'm told. NextEra sued me for using the word "terror" in an image posted on the website I manage, Ontario Wind Resistance, and on videos of this wind developer destroying an active bald eagle's nest in Haldimand county.

After being served, I asked others what they would do in my position. Almost everyone agreed that I was in the right, but nearly all of them said that they would stop using the word in the image made of "next terror" because they wouldn't want to risk everything they had and years of their life wasted in a court battle, all over a single word.

NextEra had thought this through. They realized there was a 99% chance I would stop using this term in a parodied image because that's usually what happens when they lay a letter on an opponent of theirs. SLAPP suits are cheap and effective, and as long as the person SLAPPed is scared or humiliated, the corporation doesn't even risk bad publicity. It takes a certain amount of nerve to be the 1% who refuses to accede to their demands, but that doesn't mean that the stress, the burden and the impact of a SLAPP doesn't hit the defendant just as hard. That 1% would no doubt be higher if there was someone to back them up—a judge to say, "This lawsuit has no merit," thus allowing the defendant to walk away unscathed, with their free speech intact.

There's really no logical reason why the lawsuit against me and other current SLAPP victims are denied legal protection under Bill 52. Ms. Wynne's office told a Canadaland reporter that it was for fairness to litigants already before the court and to avoid distraction from the important public interest purpose of legislation. Both of these reasons are weak, simplistic and lack a true

understanding of what it means to protect all speech and expression.

When we're trying to stop harm from occurring, we don't say that we'll only help those who were hurt after September 24, or those who are under 45 years old, or those who live in the 905 area code. No, we help all and we protect all. Nor should protection be denied in order for the government to be fair to the instigator of the toxic SLAPP suit. Right now, the system is set up to be unreasonably accommodating and compliant to corporations like NextEra while providing zero recourse for their victims. That's what Bill 52 is supposed to fix.

As for current litigants being distracting to debate, this is nonsense. Debate is the bedrock of any healthy democracy. To silence voices, especially voices of experience, is rank censorship. What kind of law is changed to deny a person access to justice because their case is distracting to a debate? The present regime should not be deciding whether I'm good enough or sued currently enough to have access to justice. This is the job of a judge. The court asks specific legal questions, and from that, it determines whether or not to throw a case out.

This amendment to Bill 52 is effectively telling citizens, "We believe in free speech, but only after the bill receives royal assent. We believe in free speech, but only if it's fair to the plaintiff of the SLAPP suit. We believe in free speech, but only if your SLAPP suit hasn't been distracting to our debate." As others before me have said, the moment you limit free speech, it's not free speech.

I know, for my family, this lawsuit minus any SLAPP protection will continue to harm us until 2018 or beyond. As a mother and the sole provider for my family—

The Chair (Mr. Shafiq Oaadri): Thirty seconds.

Ms. Esther Wrightman: —do I risk buying a home? Do I risk taking over the family plant nursery? If not, how employable is a person where a quick Google search shows there's a huge lawsuit directed against her? Do I risk opening my mouth again?

I'm forced to wrestle with these questions daily.

Thank you for allowing me to speak freely.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wrightman, not only for your deputation but your precision timing.

The floor now passes to Mr. Singh of the NDP for three minutes.

Mr. Jagmeet Singh: Thank you for adding your voice to this discussion from New Brunswick. Your primary concern is around the retroactive protection. I actually agree with you. I think that retroactive protection should apply. There's a number of people who are facing SLAPPs who won't be protected by this legislation. Although the legislation does provide some significant protections, it's fairly meaningless to those who have already been SLAPPed and cannot benefit from the protections available.

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Do you know of any examples of people in Ontario who are currently facing SLAPPs who would otherwise not see any of the protection apply?

Ms. Esther Wrightman: I'm not sure how far along most of these cases are. I would think probably the Marineland one. There aren't too many. In what I've looked up, there didn't seem to be that many SLAPP suits in general that are staying active, but that doesn't mean to say—I don't know of them all.

Mr. Jagmeet Singh: Okay. In terms of your experience in New Brunswick, has there been any discussion

around SLAPP legislation in New Brunswick?

Ms. Esther Wrightman: I believe there was some, a long time ago, but they haven't done anything since. I'll try and change that.

Mr. Jagmeet Singh: Good. In terms of your personal experience, how much of a chilling effect has the fact that you've been SLAPPed had on other people who have

similar concerns to what you have?

Ms. Esther Wrightman: Yes, it's not good, because the first thing it does is, people don't talk to you or they're afraid to say anything to the media. The media is afraid to even talk about your issue, for fear that they might get SLAPPed. It really did damage the community. Even though they stood behind me, I could sense the chill, that they weren't willing to do as much as they used to, because they were afraid that they would get hit like I did.

Mr. Jagmeet Singh: Okay. Thank you very much. Thank you for your comments, and thank you for your contribution.

Ms. Esther Wrightman: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. We pass now to the governing side: Madame Naidoo-Harris—three minutes.

Ms. Indira Naidoo-Harris: Thank you so much for your comments, Ms. Wrightman. I want to start out by saying that I understand your concerns regarding the retroactivity aspect of this bill. So I have to ask you: In your opinion, how would you decide how far back to go, when it comes to retroactivity? How far back would we have to reach?

Ms. Esther Wrightman: Anybody who is in the position where they have to go to court should be allowed to use the legislation, as far as I'm concerned. You want to do the right thing. You don't want to do what's easy and efficient for the courts only. You want to make sure you do the right thing.

In my case, the court case hasn't even progressed. I was served, and I filed a defence, and that was it. So I'm just sitting in limbo until about 2018, waiting for them to either pursue or drop or do nothing. In my case, I'm not allowed to have the legislation work for me. It would definitely help, in my case; maybe for a case that's further along, maybe not so much. I don't know exactly how courts work. But I realize that in my case, it definitely would help.

Ms. Indira Naidoo-Harris: Thank you very much for that. Ms. Wrightman, I don't know how much time we have, but just very quickly, what would you say to those people who may believe it's unfair to have started litigation and then have the rules changed mid-process?

Ms. Esther Wrightman: Those people are usually the ones who are starting the SLAPP suits. They're the instigators. Those are the toxic SLAPP suits. They're the ones that should not be getting the free rein of it. They're the ones that you want to say no to, or at least to put the brakes on and let a judge decide whether they should go forward or back or stop.

I believe that if it was the other way around—the person who puts the SLAPP suit forward is doing it to silence the opposition. It's not the other way around. It only makes sense that you should be protecting the victim, not the instigator.

Ms. Indira Naidoo-Harris: Thank you very much for your comments.

Ms. Esther Wrightman: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. We now pass to the PC side: Mr. Hillier.

Mr. Randy Hillier: Thank you very much for joining us from Saint Andrews By-the-Sea. I'm sure it's a beautiful sunny day down in New Brunswick.

I want to just make a comment on this retroactivity. Through the debates, we've not heard any particularly valid or good reasons offered as to why the retroactivity has been removed from this version of the bill. I hope that maybe this committee will have an opportunity to discuss and debate and look at possibly reintroducing the retroactivity component. But we'll have to wait and see what gets referred back to the House.

The only thing else I would have to say is that I commend you on your imagination and creativity in your NextEra—or "Next Terror"—ads and communications. NextEra also has a few wind turbine developments in my area which many people are very, very upset with.

Thank you for all your efforts and all your work. It's unfortunate that you're facing this suit. I would just add that the retroactivity, I believe, could be incorporated for any suit that has not been dispensed with by the time this bill receives royal assent. We're not going to go back and capture suits that have already been dealt with by the courts and are finished, but any that are still in process, I think, could be captured by this anti-SLAPP legislation.

Ms. Esther Wrightman: Yes, I agree with that.

Mr. Randy Hillier: Thank you.

Ms. Esther Wrightman: Thank you.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Wrightman, for your deputation via teleconference.

CONCERNED RESIDENTS ASSOCIATION OF NORTH DUMFRIES

The Chair (Mr. Shafiq Qaadri): We'll now move to our next presenter, Ms. Temara Brown, executive director of Concerned Residents Association of North Dumfries. Welcome. You've seen the protocol. I invite you to please begin now.

Ms. Temara Brown: Thank you so much, and I thank Esther, if she can still hear us, for touching on the retroactive clause.

CRAND, as well as our friends from the Oxford Environmental Action Committee—who have attached a sheet I passed around for you guys—both agree that there are four amendments that could really strengthen Bill 52, the first being the retroactive clause, and also:

—that the bill fully incorporate suggestions from the Anti-SLAPP Advisory Panel that were delivered to the

Ontario Attorney General in 2010;

—that the bill include more potent deterrents to deter the initiation of SLAPPs; and

—for any party previously found to be using SLAPPs, to further dissuade them as well.

It's important, I think, when we're discussing stressful deliberations, to just remember to breathe. It's a very important thing to remember, so what I really want to ask you guys to do is to fill your lungs up—it's a bit of an interactive moment—and hold your breath, and for the rest of the five minutes only breathe with the little bit of lung space that you have on top. The reason will be explained soon.

I am delegating on behalf of the Concerned Residents Association of North Dumfries. Our community volunteer not-for-profit has been advocating on many interests affecting citizens and the environment in our township.

Five years ago, our community was struck with an application for a development that we believed would put our health at risk, among many other issues, and we couldn't understand how any reasonable, conscientious person could possibly believe that this would be good planning.

I want to ask again if you guys are remembering to keep breathing.

The Chair (Mr. Shafiq Qaadri): We're all holding our breath till October 19, so go ahead.

Ms. Temara Brown: Oh, I know. But there's a point to it, because we were told by our municipality that there was nothing they would do. They were too afraid of the financial repercussions that would ensue and the processes that would follow if they were to say no to this development, which would be the Ontario Municipal Board process, so they approved the application without question. Thoroughly disgruntled, we incorporated and we appealed, ourselves, to the Ontario Municipal Board, noting that in doing so we were seeking a shred of justice.

Preparing for an appeal is no simple task, and I don't have a clue how we ever managed to fundraise the tens of thousands of dollars we needed to fundraise just to participate, for our lawyers and experts. After reviewing the application, the experts did confirm that there were indeed substantial health risks

Keep breathing. I can see some people not. It's important,

Now, the proponents of this development knew what our experts were saying, and they weren't pleased, so what did they do? Leading up to and throughout the hearing, they were consistently reminding us that there was a cost risk—sometimes subtly, and sometimes not so

much, but outwardly saying, "You're risking having to pay over \$200,000," on top of the \$150,000 we had to pay just to participate.

There were many frivolous acts to intimidate us or to drive up our costs, making this already financially prohibitive process even more inaccessible, and the many hours required to participate meant that I actually had to terminate my business. Retaining work is a concern, because you never know when the next hurdle is going to come. What's more important than your health, though? This is where it came down.

In January 2014, we were shocked when the OMB adjudicator ruled to prohibit our key witness, ultimately preventing us from putting any of the case forward that we had been so painstakingly compiling. Later—we had accused this OMB adjudicator of bias—she rules in favour of the application, and the evidence acknowledging risks to our health yet again goes unheeded.

Our reward for our participation was a motion for costs seeking over \$220,000 against CRAND, but also the individual members, including myself. That was nearly 16 months ago. My family, neighbours and I have lived with the stress of this decision hanging over our heads with absolutely no explanation for the delay from the Ontario Municipal Board, including the adjudicator we accused of bias.

Now what's worse is that we are witnessing the chill over our community as citizens are too afraid to speak out; they're afraid of losing their homes. It's something, I think, that many of us feel even in speaking to you here today, when we weren't sure if were protected from other SLAPPs in speaking to you.

I want to quickly explain the breathing activity—I hope you guys were continuing.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Temara Brown: Five minutes may have been a challenge, but for us, it has been five years. With somebody with a limited lung capacity, like my father, this is everyday life. There's a stress of witnessing somebody preventing us from advocating for our health and, ultimately, preventing us from ever finding that shred of justice. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Brown. We'll go to the government side. Mr. Berardinetti.

Mr. Lorenzo Berardinetti: I just want to let the deputant know that she was speaking to a certified doctor who understands breathing very well. Hopefully, you'll pass on whatever we need to know about breathing. That was meant in a light way.

Thank you for coming here. I've read your whole submission and I understand the position you're in. I understand the retroactivity that you're seeking. How far do you think it should go back? There are people who are going through the litigation process right now that don't have this bill in front of them.

Ms. Temara Brown: I'm glad you asked this because CRAND won't be protected from this bill, but there is

comfort in knowing that, even if it did pass without it—although, there really is no excuse not to put the retroactive clause—no one else has to suffer this.

I don't think there is any reason to have a date on when it goes back. Part of the problem with SLAPPs is that they drag them out, and that prevents you from being able to carry on with your life. If something is before the court and it's taking that long, why should we discriminate?

Mr. Lorenzo Berardinetti: Oh, I see. You want people who would benefit from this bill.

Ms. Temara Brown: Such as myself.

Mr. Lorenzo Berardinetti: Okay. Thank you very much. That's all the questions I have, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Berardinetti. To the PC side: Mr. Hillier.

Mr. Randy Hillier: I've read over your documents. I also read over the OMB decision. Just for clarification for the committee and myself: I understand that it was not a suit that you faced; it was a process of challenging an OMB decision, and then the OMB awarded costs out of that decision. There wasn't a suit against it; it was just the awarding of costs.

Ms. Temara Brown: It's a bit more complicated than that. There are actually more parts in this than I have five minutes to explain, of course. It was motion for costs through the OMB, yes, after the hearing, but there is no decision on it yet—almost 16 months and no decision.

Mr. Randy Hillier: Okay. But there wasn't a suit initiated, a defamation suit or any other sort of suit; this was a motion for costs out of the tribunal's decision.

Ms. Temara Brown: Which we argued to be completely without merit—used to intimidate us. The fact that they even went after us as individuals, when the individuals were not there participating—it was to really intimidate us and prevent us from continuing forward when we had the evidence that we had.

Mr. Randy Hillier: Okay, thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Now to the NDP side: Mr. Singh.

Mr. Jagmeet Singh: Have you heard any rationale that provides any reason that it would make sense to limit the retroactivity to one year, two years or three years? Have you been provided with any rationale for that? Have you heard any reason that would make any sense to do that?

Ms. Temara Brown: I love the question, because I've honestly been trying to find out some sort of explanation for so long that could positively justify it. It is so wrong.

Mr. Jagmeet Singh: I agree. In terms of removing it: Do you see any reason that people should be denied this protection, removing the retroactive clause that did exist initially? Have you and your association come across any reason that would make any sense?

Ms. Temara Brown: No, and I really want to find an

Mr. Jagmeet Singh: Just an additional point that you brought up in addition to the importance of having the retroactive clause and that there should be no limitation

and that anyone who has got a claim in court now that meets the definition of a SLAPP should benefit from the protection: You've raised an additional issue of the use of motions for costs as, perhaps, another technique or another strategy to silence people. Maybe you can talk about that as something separate, perhaps, from SLAPPs, but this idea of awarding costs in motions where people want to participate., citizens want to participate—maybe that's also an additional form of silencing.

Ms. Temara Brown: Almost the entire OMB process feels like a form of strategic litigation, because it is so cost-prohibitive and threatening and overwhelming, and there's no hope that it's ever enforced. Anyway, there were many actions that were taken to either drive up our costs, so that we couldn't afford to participate, or to really make it financially impossible or really the emotional stress.

What I wanted to get across today, because you're going to hear a lot of policy talk, is just how much of a nightmare it is to go through this, and that nobody should. That's really why the retroactive clause needs to come back. This bill needs to be passed right away. Nobody should have to suffer this. Make sure everybody is as protected as we can. It's really awful. We're trying to protect our health, and we're being silenced on it. I don't know how to tell you guys—every day I spend watching my dad suffer, we're living in a dustbowl and I don't know what to do to protect him, and I'm sued for it—or being threatened, anyway. It should fall through.

Mr. Jagmeet Singh: Thank you very much for sharing.

CPAWS WILDLANDS LEAGUE

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Anna Baggio of the CPAWS Wildlands League. Welcome. You've seen the protocol: five minutes in which to make your presentation. I invite you to please begin now.

Ms. Anna Baggio: Thank you for allowing me to appear before you today on this very important bill. My name is Anna Baggio. I'm the director of conservation planning for CPAWS Wildlands League. We are a not-for-profit charity that has been working in the public interest to protect lands and resources in Ontario since 1968, beginning with a campaign to protect Algonquin Park from industrial development.

We have extensive knowledge of land use in Ontario, and a history of working with provincial, federal, aboriginal and municipal governments; communities; scientists; the public; and resource industries on progressive conservation initiatives. We have specific experience with the impacts of industrial development on boreal forests and wildlife that depends on them, as well as dedicated protected areas establishment and management expertise.

We believe that strategic litigation against public participation, or SLAPPs, is a growing problem in Ontario. It is a critical core function of our work that we are able to create solutions that are in the public interest, and are

able to communicate them freely to the media, industry, First Nations, governments and the public without fear of being sued and bankrupted. This is getting harder and harder in today's climate.

It is our view, and we share it with the Canadian Environmental Law Association and many other groups, that by stifling the public's willingness to engage in public participation, SLAPPs fundamentally threaten our democratic process. We also know that this matters to individual members of the public, because they tell us, and call us, looking for help. We have some direct experiences we'd like to briefly highlight.

After we participated in public consultations regarding a new mine in northern Ontario and communicated to our members and the public, our organization received a threatening legal letter from the company. Thankfully, the company did not follow through, but threat of legal action now seems to be the go-to response of some members of that industry. Currently, there has been a flurry of legal cases surrounding forestry.

With lawsuits, there are only winners and losers. Moreover, lawsuits require retreat into legal corners and stifle opportunities for open dialogue and creative solutions. We have also seen politicians voting to censure public voices, including our own, on issues related to forestry. This is having the effect of creating an atmosphere where it becomes acceptable to seek to quiet science-based voices and not encourage their participation.

While we have been threatened with legal action, we have not yet had to face a lawsuit. One of our employees, however, has had first-hand experience, as he is a member of KI, a small First Nation located 600 kilometres northwest of Thunder Bay. We have worked with KI for years, and were appalled to witness Platinex, a mining exploration company, bringing a lawsuit against them. I asked John Cutfeet to share with me some of his thoughts so that I could relay them to you today. This is from John:

"In 2006, Kitchenuhmaykoosib Inninuwug"—I said that kind of okay, I guess—"was sued for \$10 billion"—billion, with a B—"which was designed to intimidate, silence and financially cripple KI for speaking out against a drilling program, where the company was provided 'quiet access' to the land, without the knowledge or consent of the people. The company asked the court to rule that any monies coming into KI be set aside to pay for the damages for which they were suing Kitchenuhmaykoosib Inninuwug, an impoverished ... community."

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I'd also like to clear up some confusion that may exist about Bill 52. "It has been suggested that Bill 52 would prevent individuals and corporations from protecting themselves against an unfair and untrue 'smear campaign.' This is not accurate. The proposed legislation does not change the law on defamation, it only creates a new procedure to help ensure the court's resources and powers are not being used to shut down legitimate public debate and discussion."

We support this bill and encourage the Legislature to enact it. We agree that the core feature of the bill, which sets out the test for dismissal, seeks to carefully balance the need to protect and promote freedom of expression in matters of public interest with the need to safeguard a person's reputational, business or personal interests. We would not support any amendment to the test which would weaken it and undermine the objectives of the bill.

We understand that the bill, if passed, will apply retroactively to the date of first reading. We recommend that the bill be amended to apply retroactively to an earlier date, perhaps to the date of the Anti-SLAPP Advisory Panel report, October 28, 2010.

Thank you for your time today.

The Chair (Mr. Shafiq Qaadri): Thank you very much, Ms. Baggio. We'll begin the first line of questioning with the PCs: Mr. Hillier.

Mr. Randy Hillier: You like the bill just the way it is, and you think that they got it right on the balance of protecting freedom of speech and preventing mistruths or misleading or false statements from being said that may harm people or their reputations or businesses, correct?

Ms. Anna Baggio: A lot of work went into the thought around the test for dismissal, and I think the test for dismissal does its job very well, yes.

Mr. Randy Hillier: The committee has heard from other significant and prominent legal professionals who find that the threshold is not well balanced and too broadly worded, that it would allow suits that have merit where there have been misleading or falsehoods stated—that those actions against those mistruths would also be thrown away. Are you concerned at all about the harm and reputations of people or companies not being able to defend themselves with this legislation?

Ms. Anna Baggio: No, because the test for dismissal is very clear: You have to demonstrate you've got merit, and if you can demonstrate that, then it goes forward. I think they've done a very careful job; I think that the experts they brought forward on the panel—some of the experts in the field on both sides of that issue—crafted something quite carefully. I've consulted other legal experts, and they support it. So I'm comfortable with the balance that has been struck there.

Mr. Randy Hillier: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. To the NDP side: Mr. Singh.

Mr. Jagmeet Singh: Thank you for being here. A couple of quick questions: One is, is there any rationale that you can think of for why the retroactive clause has been removed? Is there any justification for that in your mind?

Ms. Anna Baggio: I haven't heard one.

Mr. Jagmeet Singh: I agree with you. In addition, in terms of how far back to go, how does your organization feel about—that any existing SLAPP, any existing lawsuit that meets the definition of a SLAPP, should be entitled to the protection of this legislation?

Ms. Anna Baggio: I believe the advisory panel said it best when they said that anyone should have this tool

available to them that is under civil litigation. I support that.

Mr. Jagmeet Singh: Okay. Just specifically, two issues were raised. I think you can respond to this one quite well. An issue was raised about different-sized organizations receiving protection and not receiving protection. I would say that at the end of the day, there is still an imbalance of power, no matter how big the community organization and the not-for-profit organization, and the other side being a much larger corporation. Maybe you could speak about that.

Ms. Anna Baggio: A lot of us are always going to be on the underdog side of that equation. Again, I thought the advisory panel did a very good job on that point. They thought about it, and they said, "You know what? It doesn't matter who you are—rich or poor, black or white, green or yellow. Anyone should be able to use this tool." So for me, they weighed in on it and they said that no one should be excluded automatically from the protection of this legislation, and I agree. It should be available to everybody.

Mr. Jagmeet Singh: Excellent. Finally, in my last seconds, the Advocates' Society talked about the one threshold, the "no valid defence" component: that that was too high of a burden, that the plaintiff had to show that there was no valid defence. Do you have any comments on that specific issue?

Ms. Anna Baggio: I'm not a lawyer, so I don't really know what they mean on that one.

Mr. Jagmeet Singh: No worries; no worries. I'll just bring it up with future deputations.

Those are all of my questions. Thank you so much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh and thanks to you, Ms. Baggio.

Actually, we have the Liberal side as well. Mr. Delaney, please go ahead. You have three minutes.

Mr. Bob Delaney: Thank you very much, Chair. Some of my points have been covered. I have just a couple of quick questions. Do you believe that the bill preserves or enhances people's freedom of speech?

Ms. Anna Baggio: I think it brings in place a procedure to make sure that, yes, freedom of speech will be protected, or enhanced.

Mr. Bob Delaney: Does the bill as drafted enhance people's right to have their opinions heard?

Ms. Anna Baggio: "Enhance"? I'm not sure. But certainly it brings in a procedure that, in the case of conflict, if somebody should bring litigation against someone, they can at least know that they can take it to the court and this special procedure will be available to them. In that respect, they'll at least have a little bit more to arm themselves with than without it.

Mr. Bob Delaney: Would the bill, if passed in something like the form that it's in now, have, in your opinion, any unintended consequence such as giving people a licence to slander?

Ms. Anna Baggio: Not at all.

Mr. Bob Delaney: Okay. Thank you very much, Chair. Those are my questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney, and thanks to you, Ms. Baggio, for your deputation.

MR. PAUL BEARANCE

The Chair (Mr. Shafiq Qaadri): We now go via teleconference to Mr. Bearance. Are you there, Mr. Bearance?

Mr. Paul Bearance: Yes, I am.

The Chair (Mr. Shafiq Qaadri): Thank you. Just let us know where you're calling from, by the way.

Mr. Paul Bearance: I'm calling from Kingston, Ontario.

The Chair (Mr. Shafiq Qaadri): That's great. You have 10 MPPs listening to you right now and you have five minutes in which to make your address, to be followed by questions in rotation. Please begin now.

Mr. Paul Bearance: Thank you very much for allowing me to present. The members of the committee should have in their possession a scientific report, prepared by Peter Barton, the head engineer of Emissions Research and Measurement Division of Environment Canada, a key publication. Can you confirm that is so?

The Chair (Mr. Shafiq Qaadri): Yes, we have all of your written submissions. Please go ahead.

Mr. Paul Bearance: Thank you very much.

The report has been described on SEDAR as "without merit," and I think that the question must be asked: Why would a provincial government agency condone such language, as to describe it thus? The question would be as well: Why did this happen? Why, after more than 10 years, does the language remain unaddressed? Does a fiduciary duty—is it attached to the stated mandate of that particular agency?

Now, this may seem a little bit off topic, but I think that it's valid. The Supreme Court of Canada in Bhasin v. Hrynew recognized "that good faith contractual performance is a general organizing principle of" Canadian "common law." So how does this pertain to Bill 52? I suppose I feel that a duty exists on me—whether that duty be real or merely perceived—to bring this to your attention, and if there's room for improvement, then I believe that a duty exists to do just exactly that.

I would also suggest that whether or not it still remains, the top three issues in the upcoming federal election were, at one point in time at least, the economy, the environment and governance—I personally do not know how one can separate the three. It is my opinion as well that policies need to be driven using the scientific method, and to do otherwise will eventually lead to consequences most unwanted.

By definition, science is "knowledge or a system of knowledge covering general truths or the operation of general laws especially as obtained and tested through scientific method."

Now, the stated purpose of Bill 52 is to allow me or anyone else to voice such opinions without fear of reprisal, and it also offers the possibility of an expeditious avenue. I support expediency, but never at the expense of justice.

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Another question would perhaps be raised: What happens to the issue that gave rise to the SLAPP action to begin with? Clearly the courts are overburdened, and I feel that SLAPP actions are perhaps a larger, nastier version of those that might be called merely vexatious or frivolous. But they both contribute to clogging up the system. So in my opinion, if you wish to mitigate this undesirable effect, you must make the practice unattractive, and not just for the plaintiffs, but for law firms that choose to engage in such practices knowing full well that there is no reasonable possibility of success at trial.

This is a quote: "Being able to access justice is fundamental to the rule of law. If people decide that they can't get justice, they will have less respect for the law. They will tend not to support the rule of law ... which is so fundamental to our democratic society, as central and important." That came from Chief Justice Beverley McLachlin.

That is essentially my presentation.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bearance. We'll now move to questions, starting with the NDP: Mr. Singh. You have three minutes.

Mr. Jagmeet Singh: Thank you. As the bill is written, do you have any specific concerns about the way it is? Are there any changes that you'd like to see, or do you like the way it is as it stands?

Mr. Paul Bearance: I like the principle behind it, but unfortunately—and I heard briefly about the, shall we say, balance of power, and that really goes to money. Typically, those who engage in SLAPP actions do have the money and they go after those who are, shall we say, less able to defend themselves.

If there's any way that there can be amendments to the bill that would make it unattractive to engage in such things—I understand why one wants to be very aware of the devastating impacts of being slandered or libelled or defamed. At the same time, if the defendant is actually merely speaking the truth, if you don't have money, you will have a very difficult time retaining legal representation

Mr. Jagmeet Singh: Thank you, sir. And one quick question: How do you feel about the retroactive clause? Before the bill was crafted, there was retroactive protection so people who were facing lawsuits before this law was enacted would get protection. That's been removed now. Do you have any comments on that?

Mr. Paul Bearance: I believe that it should be included.

Mr. Jagmeet Singh: Okay.

Mr. Paul Bearance: Absolutely.

Mr. Jagmeet Singh: Do you have any comments around how far back this should go or how much protection should be extended?

Mr. Paul Bearance: Well, I suppose I might suggest that I would like it to go all the way back to the date when I was SLAPPed, and then five and a half years

later—and I offer this by way of evidence that there was a SLAPP—the plaintiff simply walked away, which is what they can do.

Mr. Jagmeet Singh: And what happened with your case?

Mr. Paul Bearance: I was sued for defamation. I retained legal counsel that produced a statement of defence and counterclaim, which was eventually—the counterclaim was dismissed at the Divisional Court level. I was a self-represented litigant at that point because I'd been essentially rendered into an impecunious state.

If I may, as well, I found that it was rather dehumanizing to have the Divisional Court suggest that, "Yes, the fraud was discovered when you had your mitts on the report. Give the plaintiffs more money."

Mr. Jagmeet Singh: Okay. Thank you very much. I have no further questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. We'll now move to the government side, to Madame Indira Naidoo-Harris. Please go ahead: three minutes.

Ms. Indira Naidoo-Harris: Thank you, Mr. Bearance, for your comments. I just want to get back to a couple of things you said. You talked about SLAPP actions being frivolous. Using intimidation tactics to silence one's opponents is a misuse of our court system, and, if passed, this legislation would allow courts to quickly identify and deal with strategic lawsuits, minimizing the emotional and financial strain on defendants as well as the waste of court resources.

I have to ask you—this is really an attempt to accomplish this goal. Would you say we're on the right track with this?

Mr. Paul Bearance: Oh, absolutely, but I would also say, please do not just let this go. Continue debating. What I read in Hansard transcripts historically was part of it, yes. Let's make this yet a stronger bill.

In terms of intimidation, the chilling effect of even being threatened with a lawsuit: Try actually being sued. Add the multipliers.

I would also suggest that that's just step two in what seems to be off-the-shelf standard operational procedure. The first one is isolation. Then comes intimidation. Then marginalization, objectification, vilification, stigmatization. Unfortunately, I couldn't send the actual statement of claim because it was too large a file to arrive. Nevertheless, that is very true. These are the things that people go through.

I also sent you some information on victims of fraud circa 2009. It is very true. When you're visited by fraud, it does affect three generations of a family. Now throw a SLAPP suit on top of that—and it's all because of speaking the truth about science, in my particular circumstances.

Ms. Indira Naidoo-Harris: Thank you very much for sharing your experiences and your comments with us, Mr. Bearance.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. To the PC side: Mr. Hillier?

Interjection

The Chair (Mr. Shafiq Qaadri): Thank you. They have ceded the time.

Mr. Bearance, I thank you for joining us from Kingston via teleconference and for your written deputations.

TOWN OF COCHRANE

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to please come forward: Mr. Peter Politis, the mayor, and the corporation of the town of Cochrane. Welcome. Your time begins now.

Mr. Peter Politis: Good afternoon and thank you for this opportunity to present on what is obviously, potentially, a very profound bill that will be coming forward, with a lot of different emotional attachments to it.

One of the ideologies I'd like to put on the table for people to consider here is that while there are many people presenting today who speak to the personal difficulties they've had with SLAPP suits, there are many other larger issues, such as an entire race of people and a region in this province in northern Ontario who are facing a lot of the counter-influences, if you will, that are a reason why this bill may be risky.

We don't disagree with the bill. We support the premise of the bill, obviously, and we support the premise of supporting the little guy, the public interest, and providing an opportunity to ensure that the legal system doesn't preclude that everybody finds justice. Unfortunately, what we find in the bill, as it is currently drafted, is that it will also provide the big guy, the wellfunded organizations, even some of the radical organizations, if you will, who are very well pronounced, very well established and don't really need any government protection on top of what they have, and who can afford to go through the legal process and allow the current justice system to determine the outcome—it will provide them an opportunity, a backdoor way, as we see it, to take advantage of a loophole or a technicality in the law and with what we think is an expedited approach to their agenda. That's concerning to us.

In northern Ontario, one of the single biggest threats we face right now is in fact the pressures that are coming from large environmental extremist groups who are portraying the industry in our region and our way of life in a wrong way, and the misinformation that comes along from that. Clearly we are facing depopulation because of the threats that are coming from these groups and the approach that they're taking, which is to misinform, to calculate and to threaten the industry, and to push their agenda. While I have no issue with them having entitlement to an agenda and their position, I'm here to speak as a politician to other politicians who, quite frankly, I believe are bestowed with the responsibility of being the extension of the people.

We seriously have an issue here with the bill as it is crafted, and there are amendments that we are proposing that we hope the committee will seriously consider to ensure that the premise and the original intention for the bill is met without creating another backdoor opportunity for large, well-funded organizations to drive their agendas, which unfortunately, in our view, is coming at the expense of northern Ontarians.

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Currently, I have three suggested amendments. We provided you with a package; I encourage you to read the package, because the context that you're missing in my five-minute presentation is laid out in the package. That context clearly identifies the serious threat, as I said earlier, to an entire way of life and a race of people who have now learned to become very balanced and work harmoniously with the environment, and are suffering the consequences of the groups that we were speaking to. I'd hate to see us, in haste as a government, pass legislation that would jeopardize that.

We have three proposals for the committee to consider. Legal action resulting from public participation would need to be reviewed by a judicial officer or other provincially appointed expert prior to being filed to ensure that no one is forced to defend themselves against a baseless charge that amounts to a SLAPP suit in the first

place.

The second is to target the bill specifically to apply to volunteers and small community organizations with annual budgets of less than \$100,000 and who have no pecuniary affiliation or tie to larger groups or organizations.

The third and final is that public interest—the test that was spoken to earlier as dependent on public interest, in section 137.1(4), which allows legitimate lawsuits to be extinguished, should be removed and replaced with a bad faith-based test, such that only lawsuits brought in bad faith can be extinguished. Unlike the vague concept of public interest, which can mean almost anything, courts have given definite meaning to the term "bad faith," such that a bad faith-based test will lead to more predictable and just decisions by the court.

These are very practical amendments that we're suggesting the committee seriously consider that would not only maintain the original premise of the bill, which we think is a solid premise, but would also ensure that other Ontarians—Ontarians who are drawn away from the public eye, if you will, and whose scenario may not be as well known here, where the Legislature is making these decisions—are not put at risk.

Certainly, I'm putting our faith—our town of Cochrane is putting our faith—in this committee to come together as politicians and as an extension of the people that they're here to protect to ensure that we very closely look at these dynamics and we ensure that we're not making decisions in haste.

I'm happy to answer your questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mayor Politis. To the government side: Mr. Potts.

Mr. Arthur Potts: Thank you, Your Worship. Thank you for coming down here to share your views. We heard earlier from other northern communities. I don't think we've had the chance to put on the record how important

the government knows that forestry is in Ontario, and the jobs. It's our sincere hope that whatever this legislation—that one of the unintended consequences is not to permit people to make defamatory statements and get away with it, no matter how small or large the organization is.

With that caveat, you do know that senior justices in the province—McMurtry and Iacobucci and Osborne—came forward and said that the balance that we're striking in this act was the right level of balance. It still allows a quick, expedited route to determining whether it's frivolous and whether it's meant as a SLAPP as opposed to a legitimate concern. Do you take issue with their assessment as senior jurists?

Mr. Peter Politis: I wouldn't take any issue with somebody who is an expert in a field that I'm not in. I take that to heart.

I guess the question I would ask is a practical one. The practical question is, when we're looking at parameters in the test that I referenced, in section 137.1(4), being public interest—"public interest" isn't defined by law, but "bad faith" is. My question would be, considering the potential consequences that exist and considering the very real threat that exists to us as a people and our way of life in the whole region, would we not be more responsible in looking at defined terms as opposed to undefined terms?

Our experience with these larger groups—and I'm not speaking to the average environmentalists, because I see ourselves as being those, but to extremists and radical groups—is that they become very good, almost surgical, at how they misinform, and this would be a loophole that would worry me quite a bit in terms of not being closed. For the simplicity of just changing it and addressing that dynamic, we would hope that would be considered.

Mr. Arthur Potts: Yes, and we might argue that the extremist groups, as you term them, might be having a very public campaign against cutting down wood. We have a very good balance, I believe, in the province where we try to regulate what gets cut, where and how, and that it's sustainable.

They may continue those operations regardless of whether they're using lies and slander to do it, and it just becomes a public relations exercise. But we believe that this is balanced.

If you're willing to accept the fact that these senior justices believe that the public interest is going to be respected on both sides of the equation, I think your fears will be allayed.

Mr. Peter Politis: That's a fair assessment. I'm not sure I'm as comfortable with it as you are. I would just very politely offer something else to consider, which is that the current justice system is still run by those same justices. Why don't we have the same faith in them now, before the anti-lawsuit, to be able to address the issues up front in the process?

Mr. Arthur Potts: We're giving them the tools.

Mr. Peter Politis: You're giving tools to others for other things as well.

Mr. Arthur Potts: That's all.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts. To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much. I appreciate the opportunity. Welcome, Your Worship.

Mr. Peter Politis: Thank you.

Mr. Victor Fedeli: We have had other deputations, and I just want to go over some of the information and maybe make a counterpoint to the earlier comment that we heard from the Liberal MPP.

In the last dozen years, we have seen 63 forestry operations close in Ontario, primarily northern Ontario. Eight out of 10, 80%, of all the mills are closed, and I would have to suggest, in all due respect, that the recent closings of the mill in Iroquois Falls and the mill in Fort Frances were not simply a public relations exercise. I would think the 1,000 people in Fort Frances would consider that to be insulting to them and their families, who are now out of work over what was the result of a very devastating campaign.

I notice, Your Worship, that you are also supported by NOMA, the Northern Ontario Municipal Association. I see their letters here that were handed in in earlier deputations. The northern Ontario association of chambers of commerce and yourself, along with Mayor Roger Sigouin of Hearst and the United Steelworkers, headed south to make a presentation. I also note that you are joined by Chief Earl Klyne of the Seine River First Nation.

In your deputation, you made a comment from Chief Sara Mainville of Couchiching First Nation, where she says, "The Greenpeace campaign is ill-informed, unfair and unworthy of government protection," followed by former Fort William First Nation chief Georjann Morriseau, who says, "Bill 52 will undermine community autonomy, treaty rights and territorial jurisdiction." She goes on to say, "Bill 52 represents a clear and unequivocal danger to First Nations and aboriginal people."

We heard another comment earlier, and this is my question to you: Do you agree that the purpose of this bill is to allow professional environmental groups the right to defame?

Mr. Peter Politis: Yes. I agree with the presumption that it provides them an opportunity, or a tool, if you will, to expedite their agenda, yes. That's the fear we have.

What we're proposing to the committee isn't, again, stopping the bill or what have you. We're proposing that the committee simply step back, take a breath and, amidst all the emotion, recognize that there are some real consequences to this bill that we can modify with some very simple language—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. The floor now passes to Mr. Singh of the NDP.

Mr. Jagmeet Singh: Thank you very much. Welcome, Your Worship. Just a couple of quick questions.

I want to give you a scenario. You indicated perhaps putting in a cap on the size of the budget of the organization, and whether this protection should apply to that organization or not. If I give you a scenario, I think that there are a great number of flaws to that solution.

One is that if an organization perhaps has a budget of over \$100,000—say it's an organization that provides or helps Ontarians with clean water and advocates clean water and provides pumps to different rural communities, and they have an over \$300,000 budget, but they spend \$300,000 on providing those pumps to people, and they say that the water is going to be polluted by a particular project. They wouldn't get the protection under your proposal.

I could come up with countless examples where simply putting in a budget and having that budget requirement could preclude a number of very good organizations that do great work. They would be unfairly undermined by this type of amendment. I think that what the committee had suggested was that everyone should be entitled to protection against a lawsuit that is not of merit

Does that make sense to you?

Mr. Peter Politis: Your understanding of it makes sense to me, but I'll offer you a counter-thought to consider, as well: Wouldn't it stand to reason that the large organizations would have the resources to go through with a normal court process, which affords them the protection of the law if they in fact are telling the truth? At the same time, while you're using a budget of \$300,000, I'm not sure how many of the prominent organizations which affect policy the way it has been affected in the past 10 years have \$300,000 budgets.

What about the larger organizations with \$300-million budgets, who have an agenda and who are driving the process? Would we potentially be giving them a backdoor way of driving that agenda, which, as I've explained to you here, has a very profound impact on a million people in Ontario who have a completely different way of life and a very balanced way of life that is world-renowned?

1510

Mr. Jagmeet Singh: And what about the argument that whether it's a \$300-million organization or a \$1 organization, if their lawsuit satisfies a test that it's not of merit, then they should be protected by the bill?

Mr. Peter Politis: Yes. What I'm saying to you is, it's just that test. We need to look at the test a little more thoroughly. That's what we've suggested: that if we don't use public interest, that we use terms like "bad faith," then we're in support of the premise of the bill and what you're trying to accomplish. We're very clearly trying to identify for you a real consequence here, saying that we have to be careful with—and the test itself is going to be at the crux of everything. So let's make sure the test is right and let's use terms that are legally defined now as opposed to terms that aren't legally defined, that can only—

Mr. Jagmeet Singh: One question you brought up was the entire way of life and the race of people that would be affected. What did you mean by "race of people"?

Mr. Peter Politis: Northern Ontarians have our own culture. It's quite different from what exists down here. Ontario is a big province. We have a dialect in language.

We have a completely different view on a lot of different items in life, so we look at ourselves as a race of people. We're defined by those terms. It doesn't make us any better or worse, and anyone else who is not part of the race that we consider ourselves, you should not be offended by that. It's just that we have a distinctive way of life that needs to be protected.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mayor Politis, for your deputation on behalf of the town of Cochrane.

MS. VALERIE BURKE MS. ERIN SHAPERO

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward: Ms. Burke and Ms. Shapero. Welcome. Please be seated. You've seen the protocol: five minutes for an opening address with questions to be followed in rotation. Please begin now.

Ms. Valerie Burke: Good afternoon, Mr. Chair and committee members. Thank you very much for your time today. My name is Councillor Valerie Burke and I would like to introduce Erin Shapero. We are very strongly in favour of Bill 52 and will tell you our story as succinctly as possible.

In early 2010, the town of Markham council was faced with a crucial decision: Either expand its urban boundary north of Major Mackenzie Drive into prime agricultural land or keep the boundary at the current location. The town was required to decide how it would accommodate the province's Places to Grow population targets to 2031.

Councillor Erin Shapero and I proposed that the urban boundary remain the same and that the town intensify sustainably to 2031. We advocated protecting the agricultural land north of the town's urban boundary—roughly 5,000 acres—by creating a permanent "food belt" for agriculture. Markham, like many other GTA communities, has seen a rapid loss of Canada's last remaining class 1 agricultural land to low-density development. This is a trend that worried us, residents and food security and sustainability experts alike.

The food belt proposal was well supported by residents and sparked the interest of the media. Councillor Shapero and I were interviewed by various national media in front of the rolling green hills of the Beckett Farm, one of Markham's most beautiful and iconic farms facing the bulldozer. This location helped illustrate the impact of council's pending decision.

In April, just weeks before a crucial Markham council vote, a letter from Upper Unionville Inc.'s lawyers was hand-delivered to Councillor Shapero and me threatening strong legal action. We were accused of trespassing on the Beckett Farm property. Copies of the letter were also emailed to all members and the mayor of Markham council, filled with threatening, false and misleading information stating that we were open to criminal charges for our behaviour. Upper Unionville Inc., owned by Silvio DeGasperis and partners, had purchased the farm

and were speculating on other lands council was considering as part of the urban expansion debate.

A considerable amount of time and energy was spent by us and our lawyers on this potential legal action. At the same time, other councillors were being verbally threatened for even thinking about supporting the food belt proposal. The chill was starting to take its desired effect.

Ms. Erin Shapero: In the end, the very contentious vote came to a head with Markham council voting 7 to 6 to expand the town's urban boundary.

Keep in mind that November 2010 was also an election year, and with it on the horizon the message from developers to councillors was clear: "Cross us and you'll face lawsuits and loss of financial support for your upcoming election campaigns."

Upper Unionville Inc. did make good on its threats to sue us both. The SLAPP suit legal proceedings continued into 2011. Councillor Burke and I were very fortunate to have excellent lawyers, lots of public support, and were able to successfully defend ourselves. But not everyone is so lucky.

In January 2011, Justice James Spence ruled so strongly in favour of our position in this classic SLAPP suit, his decision called the lawsuit an "abuse of the court's process and an attempt to intimidate the councillors." He said further: "In pursuing this claim against the defendants ... Upper Unionville Inc. and its principals have sent a warning to Markham town council. The implicit message is that those elected municipal officials who choose to vote or otherwise represent their constituents in a manner that may conflict with the financial interests of the developers ... (in particular, Mr. DeGasperis) may find themselves forced to defend against frivolous lawsuits and baseless allegations."

He continued, "The [statement of claim] can only fairly be regarded as having been prompted, not by a desire to advance the cause of justice, but in order to intermeddle or the collateral reason of advancing the political interests of the plaintiff by harassing and intimidating the defendants."

Despite our huge victory in court, the time and energy needed to defend ourselves is something we can never get back, and the chill on our council became a deep freeze—precisely the aim of the SLAPP suit, which wasted and abused the courts' time, never mind the cost to taxpayers.

Whether you disagree or agree with the issue we were fighting for, we were elected to represent our residents, and that's exactly what we did. Ultimately, it's the public voice that was being threatened—not just our own—and that's really the disturbing truth behind these SLAPP suits.

Today, thankfully, you have the power to protect and safeguard the public's voice: our right to express opinions and what's important in our respective communities. We look to you to protect the foundation of our democracy.

The Chair (Mr. Shafiq Qaadri): Thank you, Councillors Burke and Shapero. We'll now move to our first line of questioning with Mr. Hillier.

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Mr. Randy Hillier: In your comments here, you were facing a suit, and the courts did dismiss it. So it appears that there was adequate protection to dismiss that suit.

I believe that there are abusive suits that are brought forward, and I've seen it first-hand. But I think your story maybe goes to speak that all is not ill—or not every part of our legal system is ill.

If you can maybe just share with the committee: How long did it take to dismiss that suit and how much did it cost you?

Ms. Valerie Burke: It was approximately about six months, I believe. Fortunately, we did not have to pay the costs. We were sued for our annual salary, which at that time was \$60,000. We were each sued for \$60,000, and fortunately, we did not have to. The developer had to pay that.

Mr. Randy Hillier: So you were awarded costs in your defence?

Ms. Erin Shapero: We were. However, it did not cover the full costs of the suit, which is one thing that we do recommend the committee look at. It should be full-cost recovery for defendants who have to go through this process.

To your point, member, I think you could point to our case and say, "Well, the courts did their job." However, this case was a clear SLAPP from the outset. It's something that both Councillor Burke and I should never have had to go through.

I think if we can safeguard members of the public who are clearly advocating in the public interest in future from having to go through this very costly and time-consuming process, then we should do all we can to do that, because at the end of the day, there was no base; the court was very clear. The judge said that it was a very clear abuse of process meant solely to intimidate us and that, at the end of the day, it was really to advance not the cause of justice, but other financially motivated reasons.

Mr. Randy Hillier: I understand that. If everybody acted completely perfectly and reasonably in life, nobody would have any hardship, but that's not the way of human nature. Our courts are there to find a remedy when there are people acting in an unreasonable fashion or in an abusive fashion or whatever.

Do you have any comments about—one of the things here in this bill is 60 days. If this bill was in place, would you have been able to mount an effective defence within 60 days to demonstrate that?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. The floor now passes to Mr. Singh of the NDP.

Mr. Jagmeet Singh: I'll just take up from there. I think one of the key factors is that you had to wait six months with this hanging over your head when this lawsuit was so clearly and obviously strictly to silence you. Having an early dismissal mechanism that could dismiss it within 60 days would have given you a lot of peace of mind. Like you said earlier, this wasn't simply a matter of your voices being heard, but the public's voice, because you were speaking on behalf of the public.

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I think your story absolutely shows how important it is to have an early dismissal process. Having a \$120,000 potential end cost weighing over your head is no minor thing. You had the wherewithal to be able to mount a defence. Imagine people who don't have that wherewithal. I think your story is very telling and does show why we absolutely need this type of protection, so thank you for sharing that.

The early dismissal process would have been that within 60 days a judge would have been able to look at this case and say, "Well, this is clearly a SLAPP and we want to dismiss it." Would that have benefited you?

Ms. Erin Shapero: Most definitely. Councillor

Ms. Valerie Burke: At the time we had nothing, so it would definitely be better.

Mr. Jagmeet Singh: Of course.

Ms. Erin Shapero: And just in terms of your previous comment, if we had been subject to that 60 days, I think it also would have made a large impact on the rest of our council, who at the time were making some very important decisions. Clearly the emails that were sent to all of council, threatening Councillor Burke and I, did have an effect on the other council members. Actually, prior to going into that vote where we were deciding on the future of the town's urban boundary, we knew we had the votes to carry that vote, and there was one vote that changed.

We knew that other councillors were being threatened. So if that 60 days had come into play I think we may have seen a different decision in Markham.

Mr. Jagmeet Singh: Of course. That's a very powerful example. Thank you for sharing that.

Ms. Valerie Burke: It was a 7-6 vote.

Mr. Jagmeet Singh: Yes, I know. That's very telling. That 60 days would have not only helped you, but it also would have changed, perhaps, the course of history for your entire city.

Ms. Valerie Burke: Yes.

Mr. Jagmeet Singh: That's very powerful in terms of an example.

Do you see any reason not to have retroactivity apply? It used to exist. In the previous iteration of the bill there was retroactivity; now it has been removed. Do you see any reason for that to be removed? Does it make any sense for you to have taken it out?

Ms. Valerie Burke: I think there should be retroactivity, yes.

Ms. Erin Shapero: Most definitely.

Mr. Jagmeet Singh: There should be, I agree. In terms of the time limit on it, do you think there should be any time limit on that retroactivity?

Ms. Erin Shapero: I don't, and I think this bill should have been passed many, many years ago. I think that anyone who's dealing with this issue should have the benefit of this bill.

Mr. Jagmeet Singh: The protection?

Ms. Erin Shapero: Yes.

Mr. Jagmeet Singh: I agree with you as well on that. Do you think there should be any differentiation between the size of the organization or the income of the individual that's being involved in that? You might have heard some people mention that issue. Do you think that should play any factor in terms of who gets the protection and who doesn't?

Ms. Valerie Burke: Everybody should be fairly protected in this country.

Ms. Erin Shapero: Yes, I don't think it matters. I think at the end of the day a judge is going to look at the facts and is going to weigh them. That's what's important. I think everyone should be entitled.

Mr. Jagmeet Singh: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. I pass the floor now to Signor Berardinetti.

Mr. Lorenzo Berardinetti: I wanted to thank you both for your presentation today, Valerie and Erin.

I was a city councillor for Scarborough for nine years and then on the city of Toronto for six years, so a long time there. I never actually saw one of these SLAPP cases happen in my time there, so your presentation was very interesting. I'm glad you presented today. We have people here from the ministry taking notes. I just want to thank you for your presentation. It was very, very interesting. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Berardinetti. Thanks to you, Councillors Burke and Shapero. Please take our greetings back to Mayor Scarpitti as well.

GREENPEACE CANADA

The Chair (Mr. Shafiq Qaadri): Our next presenter, please come forward: Mr. Moffatt of Greenpeace Canada. Welcome. Please be seated and please begin.

Mr. Shane Moffatt: Good afternoon, committee members, and thank you all for your time today. My name is Shane Moffatt and I work on sustainable forestry with Greenpeace Canada. I'm here to describe my experience being hit with a SLAPP suit by a multinational corporation called Resolute Forest Products, and to support this urgently needed legislation.

Greenpeace has long supported anti-SLAPP legislation, going back to our submission to the Attorney General's in 2010, which laid the basis for the legislation before us today. When I gave our submission to the panel all those years ago, the issue of SLAPP suits was more hypothetical to me at that time. Well, the issue is very

real for me now.

Because these SLAPP suits are anything but hypothetical: As the panel concluded, significant numbers of Ontarians are being silenced from speaking out on issues that matter most to us.

Members of the committee, I am being personally sued for \$7 million by this multi-billion-dollar corporation, which might just be one of the largest SLAPP lawsuits this province has ever seen. My colleague with a mortgage, a wife and a two-year-old son is also being

sued, along with Greenpeace, an organization founded here in Canada over 40 years ago and supported by hundreds of thousands of Canadians.

This lawsuit has had serious negative impacts on my life. It has affected my physical health, strained personal and professional relationships and required constant self-censorship.

Our legal advice is that this lawsuit is wholly without merit, but that hasn't made it go away for me, for my colleagues or for our loved ones. They too have borne the brunt of this lawsuit.

And Greenpeace is not alone in being sued by Resolute, which would next sue its own auditor, the internationally respected Rainforest Alliance, and two individual auditors again personally, after an unfavourable audit found non-compliance with responsible forestry standards. Rather than spend hundreds of thousands of dollars, Rainforest Alliance decided to settle, and this audit of a crown forest is now forever sealed from public scrutiny as a result.

Members of the committee, these actions by Resolute will not help make Ontario a more attractive destination for businesses looking to invest. Greenpeace has extended an open offer to Resolute to assist recovering their terminated Forest Stewardship Council certificates that assure the public our forests are being responsibly managed and which are so vital for accessing international markets. Greenpeace has enjoyed working collaboratively with forestry companies for over two decades, resulting in world-leading forestry practices and models for conservation and economic certainty.

Resolute's SLAPP lawsuits have had a chilling effect on others who would speak out about their forest practices. People I talk with are either afraid to speak or looking over their shoulders to see if they are next when they do speak out. In other words, public debate in Ontario—the foundation of our democracy—is being

trampled on.

You will notice that a range of voices have been heard here today, and I welcome them all, but what about Resolute? Ontario's lobbyists registry lists six individuals hired by Resolute to fight this legislation and its predecessor, Bill 83. For a company that denies involvement in SLAPP suits, it has invested enormous sums in fighting and lobbying against anti-SLAPP legislation.

Three of these lobbyists are associated with the Edelman group, better known for TransCanada severing its ties with the firm here in Canada for its controversial astroturfing. Resolute's Edelman lobbyists scripted submissions for other groups that cast doubt on the need for anti-SLAPP law and included such wild claims as "the cost of new housing will increase" should the legislation be passed.

Another lobbyist hired by Resolute submitted that this free speech legislation would result in the "disintegration of the marketplace of ideas." I cannot understand what this means, but I fear that these back-channel scare tactics do our democracy a grave disservice.

Before the last election was called, this bill's predecessor was on the verge of passing when it ran into

this wall of corporate lobbyists. After it was reintroduced as Bill 52, the only substantive change was a clause closing its application to ongoing cases. Asked about this in the media, former Attorney General John Gerretsen stated: "Obviously Bill 52 is weaker than the one we originally introduced"—in short, a victory for Resolute and a victory for its lobbyists.

I am here to say that Ontarians do not deserve this weaker version of the bill, and I urge you all to pass it as originally intended to uphold public confidence in our legal system and ensure that future generations of Ontarians can enjoy the robust public debate that is the foundation of our democracy. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr.

Moffatt. To the NDP side: Mr. Singh.

Mr. Jagmeet Singh: A couple of quick points: You believe that the retroactive clause should be included in this bill, yes?

Mr. Shane Moffatt: Yes.

Mr. Jagmeet Singh: And that there is no reason to have removed it?

Mr. Shane Moffatt: I see no good reason.

Mr. Jagmeet Singh: And there is no rationale, one, to remove it; and, secondly, do you see any reason to limit how far back the retroactive clause applies?

Mr. Shane Moffatt: I have heard no reason.

Mr. Jagmeet Singh: Thank you. In terms of some of the arguments that we've heard earlier, there's been an issue raised that different-sized organizations should receive differential treatment. Do you have any response to that?

Mr. Shane Moffatt: I think that's a great question, and I would advise the panel to consider seriously the impact that such a measure would have on media and journalists. Canadian Journalists for Free Expression, for example, have been outspoken in support for this legislation. Gutting the legislation in such a way would effectively remove an entire category of individuals: journalists, who are uniquely important to transparency and democratic discourse. The Attorney General's panel fully rejected such an approach with a fulsome analysis in their report.

Mr. Jagmeet Singh: So you would, again, just to reiterate, support equal protection for all participants; if a lawsuit meets the definition of a SLAPP, then it should be entitled—the victims should be entitled to protection

under Bill 52?

Mr. Shane Moffatt: Absolutely, yes.

Mr. Jagmeet Singh: Are you in a position to speak about one of the concerns that has been raised around the "no valid defence" clause, and whether or not that's too high of a burden?

1530

Mr. Shane Moffatt: I'm probably not well equipped legally to deal with the specific—

Mr. Jagmeet Singh: No problem. Thank you. I have no further questions, then.

The Chair (Mr. Shafiq Qaadri): To Ms. Naidoo-Harris on the government side.

Ms. Indira Naidoo-Harris: I want to thank you, Mr. Moffatt, for your presentation today. Thanks, also, for sharing your personal experiences when it comes to having to deal with a personal lawsuit and the impact that that can have on an individual and their family.

I want to talk to you a little bit about the importance of this proposed act and its use—to ensure that we have the tools in place to bring into use when people are trying to silence their opponents. What I want to ask you about specifically has to do with some comments that were made in the committee earlier today. As you can imagine, we heard a lot of different people present today. We heard from the Ontario Forest Industries Association, and I would just like to get your position on a couple of things, because there were comments made about groups being out there and defaming companies. There were comments also being made about companies not necessarily being the little guy when they move forward with some of their activist activities. So I want to ask you: In your opinion, do you believe that this legislation strikes the right balance between protecting public participation and protecting the reputation and economic interests of the stakeholders involved?

Mr. Shane Moffatt: I think the Attorney General's panel was weighted to adequately address those issues, and they did a fantastic job. I'd also say that this government has been very deliberative and patient in trying to get this right, and I commend the job that your colleagues have done in that regard as well.

It's worth noting that this legislation attracted all-party support originally, for a variety of reasons. The waste of taxpayer dollars involved from some of the Progressive Conservatives was appropriately raised as an issue in these lawsuits. I'm aware that Andrea Horwath first submitted an anti-SLAPP legislation proposal as far back as 2008. So I think it has been thoroughly debated, and very patiently so, and that a clear consensus has been reached.

Ms. Indira Naidoo-Harris: Just to clarify: This is about striking the right balance, and it's about freedom of expression, protecting people's rights and their ability to speak up when something happens, yet at the same time ensuring that we're not defaming a company and so on. You feel that this act strikes that balance?

Mr. Shane Moffatt: I do.

Ms. Indira Naidoo-Harris: Thank you.

The Chair (Mr. Shafiq Qaadri): To the PC side: Mr. Hillier.

Mr. Randy Hillier: So if I'm understanding this, you believe Bill 52 is good the way it is—maybe improve the retroactivity—and that this would be of benefit to you and Greenpeace in its action right now with Resolute?

Mr. Shane Moffatt: I think this bill would be to the benefit of all Ontarians, yes.

Mr. Randy Hillier: But would you and Greenpeace also benefit from this bill?

Mr. Shane Moffatt: That's not clear to me. Mr. Randy Hillier: That's not clear to you.

In the presentation this morning, we received some documentation—and we've also heard from our northern municipalities, we've heard statements from our First Nations and from forestry that they have concerns about this bill. I want to draw your attention to an email that was sent out by Greenpeace in December 2014 specifically targeting Resolute Forest Products' major customer Best Buy. In that email to tens of thousands or hundreds of thousands of supporters, Greenpeace asked them to write a false product review on Best Buy's website: "Be creative and make sure to weave in the campaign issue." That was signed by Aspa Tzaras, Greenpeace Canada volunteer program coordinator.

Do you believe that public debate should also include misleading, false or dishonest statements?

Mr. Shane Moffatt: Absolutely not. As an organization, we encourage public participation on issues that matter to people—

Mr. Randy Hillier: It seems that you're also encouraging people to provide false product reviews targeting one of Resolute's main customers.

Mr. Shane Moffatt: As a bilingual organization, things may occasionally be expressed inartfully, as you can appreciate, I'm sure.

Mr. Randy Hillier: You're saying that that was an error in translation: "Write a false product review..."?

Mr. Shane Moffatt: Absolutely not. I didn't say that.

Mr. Randy Hillier: Pardon?

Mr. Shane Moffatt: Could you repeat the question?

Mr. Randy Hillier: Here it is: You've communicated with tens of thousands of people, asking them to engage in deceitful practices against Resolute's customer. How do you warrant that? How do you justify that, and justify it under a public debate when you're engaging in false-hoods purposely?

Mr. Shane Moffatt: You have stated that we're engaging purposely in falsehoods. I would not accept that premise. I would also say that we have got clear legal advice that the lawsuit against us is without merit, and so whether this legislation will apply to us or not, we will be vigorously defending ourselves on the basis that it has no legal merit according to our legal advice.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier, and thank you, Mr. Moffatt, for your deputation on behalf of Greenpeace Canada.

MR. JEFF MOLE

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to please come forward: Mr. Mole. Mr. Mole, to you and to others, I would just remind you respectfully that we are here as a committee, the justice policy committee, to consider Bill 52, An Act to amend the Courts of Justice Act, the Libel and Slander Act and the Statutory Powers Procedure Act in order to protect expression on matters of public interest.

You've seen the protocol: five minutes. Please begin now.

Mr. Jeff Mole: May I have your permission to videotape my submission?

The Chair (Mr. Shafiq Qaadri): Is it the will of the committee to videotape this submission?

Interjections.

The Chair (Mr. Shafiq Qaadri): I'm sorry. I do not have unanimous consent, so consent is denied. Please continue, Mr. Mole.

Mr. Jeff Mole: Good afternoon. My name is Jeff Mole. I'm here today to speak in support of Bill 52, the Protection of Public Participation Act.

I'd like to share some of my story of public participation with the committee in the hopes that this bill will be amended to improve our system of environmental approvals and provide a mechanism for intervener funding. Two of the purposes of this act are to encourage individuals to express themselves on matters of public interest to promote broad public participation in debates on matters of public interest, and the act proposes measures to discourage proponents from using the courts as a tool for gagging opposition to undertakings that have significant negative impacts on the public interest.

I'm from the community of Bala, Ontario. Ten years ago, I was the president of our property owners' association when a corporation gained control of crown land at Bala Falls with a proposal to develop a hydroelectric generating station. There had been a tiny hydroelectric generating station at the site which was torn down in the 1960s because it was not commercially or economically viable. Since then, Bala Falls has become an increasingly popular destination for its other values such as tourism and recreation.

The proposed facility would create new unmitigated dangers to the public. Any energy produced would be wastefully expensive as well as not needed since the facility would not have enough water to run at capacity in the summer when we need the energy. Furthermore, any energy produced in the spring and fall may be dumped as it would likely be surplus.

That being said, I took a neutral position on development of the opportunity and undertook the research necessary to inform and represent the public interest. After looking at the various options, impacts and potential benefits, I'm satisfied that there is a safer and less destructive alternative. Unfortunately, the community is up against a very hostile developer that refuses to change the proposal in a manner that balances the tourism and recreational values with the energy values. And so began our 10-year battle to protect the public interest in Bala and Bala's most important economic, cultural and environmental assets.

In his report, in Environmental Assessment: A Vision Lost, the former Environmental Commissioner of Ontario states that "Ontario has been long burdened with an EA system where the hard questions are not being asked, and the most important decisions aren't being made—or at least are not being made in a transparent, integrated way. The province has increasingly stepped away from some key EA decision-making responsibilities, and the

Ministry of the Environment (MOE) is not adequately meeting its vital procedural oversight role. As a result, the EA process retains little credibility with those members of the public who have had to tangle with its complexities."

In 2008, the Commissioner's Message: Getting to K(no)w stated: "There have been many occasions where affected people have dedicated tremendous time and effort to the consultation process, in the sincere belief that their rational arguments could change or stop the proposed undertaking, only to have their expectations dashed when the project was approved unchanged. Despite all their work—participating in a process that will hear, but still ignore, their arguments—they discover that it can be impossible to get a 'no' outcome. This is very damaging to the credibility of environmental approval processes. It alienates the people in society who can speak for the integrity of our decision-making systems. It encourages those who reject participatory processes and endorse less constructive and more costly strategies, such as litigation or civil disobedience, as a mechanism of public decision-making."

1540

He states, "To be legitimate"—I'm going to skip what he says because I think I'm going to run out of time.

Bala is a poster child for issues that the former commissioner referred to. I'm just one of many people who have dedicated tremendous time and effort to the consultation process. Regrettably, since this report in 2008, little has improved—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Jeff Mole: —and, in fact, some measures of the Green Energy Act have probably made matters worse.

I'm just going to skip to the end: Concerned members of the public should not have to go through what we have gone through. Accordingly, I would suggest that this bill be amended to address the real cost of public participation, or in the alternate, I ask members to bring forward new bills for an intervener act and for amendments to the Environmental Assessment Act.

Members of the public must have adequate tools to do the job that government has abdicated. This is a conversation that is long overdue. I look forward to your questions and hearing motions to amend the bill.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Mole. To the government side: Mr. Delaney.

Mr. Bob Delaney: Thank you, Chair. The government has no questions for this witness.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Mr. Fedeli.

Mr. Victor Fedeli: Pass.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. Mr. Singh.

Mr. Jagmeet Singh: As the bill stands, are there any specific issues you have with the bill that need to be amended?

Mr. Jeff Mole: Yes. If you go back to the purposes of the act: The purposes of the act are "to encourage individuals to express themselves" and "to promote broad participation." It's great that there are matters that this public participation act refers to—the Courts of Justice Act and what have you—but there's a whole lot more to public participation than what is shown in the bill. Public participation is about giving people who have a real interest in making Ontario a better place the tools.

Mr. Jagmeet Singh: But specifically, is there a component of the bill that you would like to see modified?

Mr. Jeff Mole: Not per se. I think there are issues in there. You're hearing from other members of the public about how to fix the nuts and bolts of the bill, but there are things missing.

Mr. Jagmeet Singh: Sure. There's a clause, initially, that would allow for retroactive protection, so people would be protected before this law came into effect. Do you think that this law should apply to those folks, or should the retroactive clause, which has been removed—do you think that was the right decision?

Mr. Jeff Mole: I would tend to think that if Ontarians are being harassed in this manner, and there's a way to go back and rectify the situation, then we ought to do our best to rectify the situation. If it's not possible, we'll have to see what happens.

Mr. Jagmeet Singh: Should there be a limitation on how far back we go? Some people have stated that there should be no limitation, that anyone who's got an active lawsuit that meets the definition of a SLAPP should be entitled to the protection. Do you agree with that or do you think there should be a limitation?

Mr. Jeff Mole: So the Limitations Act in Ontario would be two years for commencing a claim of any sort, for the most part, except for certain—so if two years had passed, is there not an opportunity for—you'll have to explain it a little bit more as to how that works.

Mr. Jagmeet Singh: What I mean is that there might be a claim that was launched five years ago—

Mr. Jeff Mole: A proponent's SLAPP claim launched five years ago?

Mr. Jagmeet Singh: Right, someone could have been SLAPPed five years ago or 10 years ago—

Mr. Jeff Mole: And it hasn't been disposed of yet?

Mr. Jagmeet Singh: And it could still be ongoing, for example—

Mr. Jeff Mole: If it's still ongoing, then, yes, absolutely. It's still an ongoing matter, so there's no limitation period. Once the action has commenced, the limitation period stops. It's now an action, just like if you sue somebody 20 years ago and get a judgment, you can still garnishee their wages 20 years later. That doesn't extinguish the action.

Mr. Jagmeet Singh: Sure. Thank you so much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh, and thanks to you, Mr. Mole, for your deputation.

MR. MURRAY KLIPPENSTEIN

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Mr. Murray

Klippenstein. Welcome. Please be seated. Your five minutes begin now.

Mr. Murray Klippenstein: Thank you, Mr. Chair. My name is Murray Klippenstein. I'm a lawyer and the

principal of a firm called Klippensteins.

I'm here because my firm does, or attempt to do, quite a bit of what we consider to be public interest work. Sometimes that involves members of the community who want to speak out on public issues, and sometimes they have to be careful about being sued by large corporations or other interests who use the legal process as a way of strategically reducing their effectiveness. I have, in fact, represented a number of such clients, including Ms. Shapero and Ms. Burke who spoke earlier today.

My points are one or two, and I speak from the point of view of a lawyer or law firm, so from that side of this particular picture. First of all, overall, I think that this is a good bill: good for Ontario and good for freedom of expression. It's well written. I have, of course, read the bill and the paper and some comments. I would recommend that it be passed. I'm going to suggest a couple of

changes, but I think it's a good thing.

Secondly, I also want to bring my particular perspective and say, from the legal point of view, the experience of people who are sued by, let's say, companies strategically with lawsuits that are not really well founded—and that happens and I've seen it. I assisted Ms. Shapero and Ms. Burke in more than a year's legal proceedings on a case that was done for intimidation, based on a technicality, to silence and intimidate them. For someone in that position, it is very hard, first of all, to find a lawyer who has the qualifications to defend those kinds of lawsuits, who's willing to and who's willing to deal with the financial issues. So finding a lawyer—and then the financial issues are enormous. The cases can be very complicated, very tricky and go on for years. For a large corporation with lots of lawyers on tap and money and tax-deductible rights for these cases, it's not that a big of a deal.

Then there's the personal stress. You are on the hook personally for a huge amount, going through a huge amount of legal proceedings with unknown results. It is personally devastating. Those are all things I see from the lawyer's side that are an enormous burden for someone who is trying to do the right thing for the public interest of Ontario.

This bill balances an enormous, unfair, tilted scale in the ordinary rules of justice, so I think it's a good thing. Those would be my respectful suggestions and submissions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Klippenstein. We'll begin with the PC side. Mr. Hillier.

Mr. Randy Hillier: Thank you very much. I want to focus on one element in this bill, and that is that a motion to dismiss under the provisions has to be heard within 60 days. It seems to me inconceivable. We don't get much accomplished in any fashion in our courts in 60 days. Can you speak to the practicality of that? The concept is one that I agree with, but the practicality—how will our courts deal with that?

Mr. Murray Klippenstein: I think that's a good point. I looked at the 60 days and thought about it. Not much happens in 60 days, and a court already has a bit of a packed schedule.

Mr. Randy Hillier: I would think most courts are

well scheduled long past 60 days, as it is.

Mr. Murray Klippenstein: That is often the case, although often there will be cancellations and so forth. This would require some special effort by the court administration to accommodate it. It's probably possible. I think the goal is to avoid this sword hanging over people's heads for a long time. I would think an extension to 90 days might be a good thing. I don't have a hard opinion on that. But I think that the goal is to get it over with. For example, part of the procedures, I think, are to limit cross-examinations on affidavits to one day per party, so that helps that kind of thing.

Mr. Randy Hillier: I agree. The concept is good. But I'm going to ask you: If this legislation was the law today and somebody brought a motion to dismiss under it and it couldn't be heard in 60 days, what would be the status of

the motion then, in your learned opinion?

Mr. Murray Klippenstein: Well, I have two opinions, one learned and one unlearned. But no, I think that that is an issue. There are ways to deal with it. The rules or the wording could be stated so that it must be held in 60 days, subject to the direction of a judge, or something like that.

1550

Honestly, as a lawyer too, I talked about how, from the lawyers' side, having suddenly been hit by the case that is supposed to be going through all the procedures and then be solved in 60 days is a burden on the lawyer and therefore, indirectly, on the person-

Mr. Randy Hillier: Well, that was the other part. Your ability to prepare in that period of time, in 60 days: Is that even practical? It would only be large legal firms that would possibly have the resources to be able to do

that.

Mr. Murray Klipperstein: Smaller firms can do that, but it can be an extra burden. I wouldn't want it to be stretched out too long, because then it defeats the whole point. But I think 60 days could be done; maybe 90 days would be all right.

Mr. Randy Hillier: If not done in 60 days, would there be the ability to bring a motion to strike the motion because it wasn't heard within that period of time?

Mr. Murray Klipperstein: I don't think that's a big issue. The legislation, I think, should be worded so that that doesn't happen. The real answer is to-

Mr. Randy Hillier: It doesn't appear to me—the legislation, the way it's written, is 60 days.

Mr. Murray Klipperstein: I read the legislation fairly carefully. I can't remember the exact wording of the 60-day thing—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr.

Hillier. To Mr. Singh, now, the NDP.

Mr. Jagmeet Singh: Thank you, sir. I used to practise criminal defence law and I just want to give an analogy. I think this might apply.

I had scheduled a number of trials, and it would take a year, maybe eight months, to get my trial date. If I was offered an opportunity to have the charges withdrawn, it would actually free up my schedule; it would be a lot easier.

An early dismissal mechanism essentially would free up a lot of court time. Instead of clogging up the courts with long trials, it would be a mechanism to hear the case. If, on its merits, it's very easy to establish that this is clearly a SLAPP, and under a SLAPP, the judge can quickly make a determination that this should be dismissed and it would allow for an early dismissal, I would argue that, in fact, it would actually free up a lot of court time instead of clogging it up with matters that are frivolous, that would be dismissed anyway once a judge hears all the evidence. But it provides the judge, or a master, perhaps, with an easier mechanism to dismiss cases that really have no merit.

Would that make sense to you, that it would actually free up more court time and use that court time for more meaningful or appropriate litigious cases?

Mr. Murray Klipperstein: Yes, that's true pretty much by definition. If you have a case that is non-meritorious and you wrap it up in 60 days or thereabouts instead of it dragging on for one or two or three years, you have freed up some court time. You wouldn't have quite as major hearings because the legal test is pretty clear and focused, so yes, it would help somewhat, I think, with court efficiency.

Mr. Jagmeet Singh: The other question in terms of functionality: I know in both civil matters and in criminal matters, there are courts assigned—motion court—to hearing quick matters, matters that come up as they come up. Those courts, perhaps, might be the best place to hear these types of motions that are dismissal motions. They wouldn't necessarily take up a trial date or be scheduled in that manner. I think that would alleviate that concern as well. Do you think that sounds reasonable?

Mr. Murray Klipperstein: The court system has various mechanisms for dealing with different types of motions. I think, if I recall correctly, the study paper says that some of these things should be left up to the court administration and the discretion of the judges to handle.

Mr. Jagmeet Singh: That makes sense.

There's been an issue around different-sized organizations receiving different protection. Do you support that notion, or do you think that every organization should be entitled to the same protection under Bill 52?

Mr. Murray Klipperstein: I think the principles, as stated now, are fair and can apply to any organization. I think that makes sense.

Mr. Jagmeet Singh: And there's a retroactive clause that was removed. It would allow protection to flow to other individuals who are facing a strategic lawsuit. That's been removed. Is it your position that it should be added back in, or do you support its removal?

Mr. Murray Klipperstein: Well, the basic principle of the whole legislation is that these are non-meritorious lawsuits. They shouldn't be happening. So if they're in

the system now, the test that the Legislature would now adopt would apply—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. To the government side. Mr. Potts.

Mr. Arthur Potts: Thank you, Mr. Klipperstein. Thank you for coming by as a lawyer expert specializing in this field. We are delighted with your almost unqualified support for the legislation as it exists. Hopefully that 60 days is enough; we use it for ex parte injunctive proceedings and in other ways, and somehow the courts seem to make that work.

We have heard a lot of testimony about the level at which the courts would dismiss a case and whether the public interest is the right test, or bad faith. The question to you specifically: Would this bill give licence to a detractor of a project to slander a proponent?

Mr. Murray Klippenstein: No. The legislation doesn't use a bad-faith test. The study group very carefully considered that and said, "We're about protecting public expression," so you don't actually have to prove bad faith, which I think is a smart strategy. It sometimes overlaps.

Does it give proper protection? Yes. You can still sue for defamation. If you have a valid defamation lawsuit, it will go through as before. There is such a thing as a trumped-up defamation lawsuit, and those happen, and this allows that to be defeated.

Mr. Arthur Potts: There was some evidence earlier about one environmental organization, who testified a little earlier, who were counselling persons to write a false product review in order to, I guess, tarnish the reputation of an organization so that they would stop using a certain product.

Would the counselling of someone to write a false product review be a protected action, do you think, under a public interest?

Mr. Murray Klippenstein: The answer is possibly yes, but there are a lot of safeguards in there. The study group said—when we looked at this test—again, we want to focus on allowing legitimate public-interest expression, allowing lawsuits, but we don't want to say that this act only applies for thoroughly legal stuff. In one case I was involved in, there was technically a trespass. Somebody stepped onto somebody's property by a couple of metres, and then—boom—the hammer came down big time. That was the tiniest of on-paper, technical, legal breaks. If you speed by going 101, should you be hauled off into court? Look at the 401. We don't live that way.

The study group said to let the judges use good sense. If somebody does something a little bit wrong, you don't have to hit them with a legal sledgehammer.

Mr. Arthur Potts: Had this legislation been in place, you would have—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts, and thanks to you, Mr. Klippenstein, for your deputation today.

We just have a couple of things. Because this meeting is being so ably chaired, we are 33 minutes ahead of

schedule. I understand there will be a vote in the interim. In any case, I respectfully invite our colleagues to reconvene here at 4:30 today. We are in recess until then.

The committee recessed from 1558 to 1630.

SUSTAINABLE VAUGHAN

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We reconvene justice policy. We're considering Bill 52, as you know.

Our next presenter, from Sustainable Vaughan, is Mr. Satinder Rai. I invite you to begin. You have five minutes, and, in rotation by party, three minutes of questions. Please begin.

Mr. Satinder Rai: Thank you for the opportunity to speak. Sustainable Vaughan is a member of the Greenbelt Alliance, and our work is largely related to fighting sprawl and promoting public transit development in York region. We are not an anti-development organization; we encourage density and density-stimulating transit investment. I work for an architectural firm designing high-density residential developments for many prominent developers in Toronto. I respect the important contribution of the development industry in our region. What we object to is the expansion of urban boundaries within the white belt lands, with an ultimate objective of protecting the greenbelt.

What motivated me to come speak today before the committee is not just the need for this legislation; to us in environmental activism, it is a long time coming. I'd also like to provide insight to the province's poor oversight of its growth policies that often lead to conflicts between developers and citizen-led environmental organizations.

Our group was created in 2010 during the creation of Vaughan's official plan. At that time, York region and the city of Vaughan called on the expansion of Vaughan's existing urban boundary into designated white belt lands. Because of my background in land use planning, I, along with former Sustainable Vaughan codirector Deb Schulte, were able to show that to meet its provincially mandated growth targets, Vaughan did not need to expand its urban boundary. Growth within the existing boundary due to investments in public transit infrastructure would in fact exceed targets.

Our motivation? No different than the province's: Deter the creation of car-dependent communities at the outer edges of the region that contribute to traffic congestion while protecting the great natural assets such as the river valleys and headwaters that exist in northern Vaughan; and also promote vibrant, denser, walkable communities where residents aren't socially isolated from one another.

After numerous meetings with staff at the Ministry of Municipal Affairs and Housing, showing our research and findings, we were told that the region was in fact compliant with what the province had mandated and that they would not intervene. The only recourse left was to appeal the region's decision at the OMB, placing us in an adversarial position against the largest developers in the GTA and their lawyers.

Most of the large subdivision developers in the GTA reside in Vaughan. For decades, they faced little to no opposition to their plans to sprawl, particularly within their own backyards.

At the same time as we used numbers and facts in our fight, then-Markham Councillor Erin Shapero and current Markham Councillor Valerie Burke were promoting the idea of creating a permanent food belt out of the white belt lands in Markham. York region was also proposing to expand the urban boundary in Markham.

Much has changed post the Places to Grow Act and the creation of the greenbelt. There is an agreement that we need to curb sprawl, and there's a realization that traffic congestion is an enormous cost to our economy and health and that we don't have unlimited land to

develop on in this province.

With the creation of the greenbelt and the Places to Grow policy, we're in a new era of growth management that also requires new legislative protections for the activist community. When the province created the greenbelt and enacted Places to Grow, it did not create an oversight mechanism to review municipal growth plans, as we did, to prove growth is needed. The task to protect the province's own legislation has been forced on residents' groups who have neither the experience nor the resources to fight large developers.

Without that mechanism, what's the recourse? The OMB. Lawyers are expensive, and the OMB process long. Time delays and expenses can cost developers millions of dollars. Developers have an incentive to try to avoid this process, and this often takes the form of

intimidation, both subtle and not-so-subtle.

In March of this year the OMB blocked the expansion of Niagara Falls' urban boundary that included a proposal for nearly 1,400 residential units. In its decision, the board found that the city and the region have not demonstrated that there is a need for urban boundary expansion. This case validated for me that the Ministry of Municipal Affairs and Housing were wrong in not considering our claims.

During the time of our appeal at the OMB, Councillors Erin Shapero and Valerie Burke were sued for \$60,000 by Upper Unionville Inc., a farm in the Markham white belt expansion area where they posed for a photo op. Upper Unionville Inc. is associated with developers Carlo Baldassarra, Silvio DeGasperis and Jack Eisenberger. This sent a chill through our group and its supporters. These developers were sending a message to anyone willing to oppose their plans. I have written extensively in the Vaughan paper, worried that, without a lawyer reviewing my opinion pieces, was I exposing myself to a lawsuit?

During our time attempting to raise funds for our appeal, we held numerous community meetings to help inform residents that there was a better way to grow the city, through incremental increases in density within the existing urban boundary, mainly through the development of townhomes.

I began to realize that those meetings were being attended by planning lawyers, working for developers that I recognized from city meetings related to the official plan. I was also told by residents that developers were sending representatives to those meetings. Although not outwardly intimidating, the message was clear: "We're keeping an eye out for you."

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Satinder Rai: Another Sustainable Vaughan director, Steven Roberts, started suffering from anxiety and nosebleeds and became uncomfortable with our ongoing OMB appeal. Fearing a similar lawsuit, Stephen always feared losing his house. Stephen had taken a developer to the OMB to protect a wood lot in Vaughan and was threatened by the developer that they would come after him for costs if they won. The stakes are much higher this time, and I was definitely nervous and started questioning if this was worth it.

While working for my former employer, one of our clients, SmartCentres, forwarded a request from developers, TACC, that my office should fire me. This was

payback for daring to-

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Rai. The floor now passes to Mr. Singh of the NDP—three minutes

Mr. Jagmeet Singh: Sure, thank you. Mr. Rai, are there any other points that you'd like to cover that you

were unable to complete in the time allotted?

Mr. Satinder Rai: Yes, what I wanted to promote is the idea that this legislation provides a good starting point to ensure public participation in how we shape our cities, but we need to go further because what this doesn't do is—it's kind of phase 1—deal with the costly OMB appeals that shut community members from participation.

So there's a threat to participation and then, within the OMB appeal, there's the cost-prohibitive ability to participate. I think both of those issues are part of creating a more democratic process, where community members feel that they can both not be threatened and not be

costed out of participating.

Mr. Jagmeet Singh: Okay; interesting. While this bill will protect against the strategic lawsuits that would otherwise deter people from participating in public discussion and public participation, broadly speaking, the cost barrier that's imposed by certain processes—for example, the OMB—is also discouraging public participation.

Mr. Satinder Rai: Yes. I think that in terms of the first phase—I call it phase 1 and phase 2. Phase 1 is this bill, Bill 52, which deals with just being able to speak out, just being able to participate by speaking out. I think the activism side, which is the OMB side, is the second phase, which is the cost-prohibitive—this really relates to post the growing-the-greenbelt legislation. This isn't someone being angry at a developer because there's a condo going up down the street; these are large tracts of land that are worth hundreds of millions of dollars. So the stakes are incredibly high, both to the environment and to the potential cost to the developers.

This is kind of like the second phase. This one is long overdue, and I think that alleviating the threat will at least

allow people to participate at the kind of level that they want to do, which is usually speaking out.

Mr. Jagmeet Singh: Any thoughts around any ways to improve the bill or to amend the bill? Any components that you think are missing or need to be strengthened?

Mr. Satinder Rai: No. I think that, in terms of my reading for the work that I do in terms of participation and engagement, the bill will alleviate that threat that you always feel when you're in a place like Vaughan, in which there are not a lot of community activists for this very reason.

Mr. Jagmeet Singh: Okay. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. To the government side: Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Thank you so much, Mr. Rai, for your comments and for taking us through your particular experience with all of this. We very much appreciated hearing your insights into this.

I want to ask you just a couple of things. First off, the intention of this bill was to protect people's freedom of speech and their right to have their opinions heard, while ensuring that they do not have licence to slander. In your

opinion, does this bill accomplish that goal?

Mr. Satinder Rai: Yes. From my reading—I'm not someone who's in the legal world; I'm in land use planning—I believe it would help to alleviate that threat. It's really the threat. It's not the lawsuit itself; it's the threat of a lawsuit. Any ability that you can get rid of that threat would really help to improve people's roles.

People really want to engage in Vaughan, but people don't have a lot of means to fight a lawsuit. The fear of losing someone's house, which is what my co-director faced, is very real. That kind of fear limits anyone's

ability to participate.

Ms. Indira Naidoo-Harris: Do you believe this bill will actually level the playing field between groups and

larger companies?

Mr. Satinder Rai: Yes. I wouldn't call it levelling the playing field; I think it's just alleviating the threat. There is still a long way to go before people feel that they're allowed to participate, and second, it's cost-prohibitive, which is the OMB and having to go through that expensive route in order to really challenge and protect the environment.

1640

Ms. Indira Naidoo-Harris: Okay. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. To the PC side. Mr. Hillier.

Mr. Randy Hillier: Thank you for coming today. In your comments—we've been hearing this theme from a few deputations today—the OMB has come up. I just want to see if you can expand on this a little bit. You've brought up the OMB, and this bill is not addressing the OMB.

Mr. Satinder Rai: No.

Mr. Randy Hillier: However, you raise the point of access to justice through the OMB. I'm wondering if you could just maybe provide to this committee—what do

you see as a greater impediment to public discourse: the cost, the expense, the time and the complications going through a tribunal like the OMB, or the threat of a SLAPP suit?

Mr. Satinder Rai: The threat, because most people aren't going to be able to comprehend issues like the Places to Grow Act or land use planning, but they really want to be able to participate, to be able to come give deputations, to speak out, to write articles for papers. People's levels of engagement are going to vary. For the most part, that engagement is going to be just speaking out. The first phase of protection is going to protect more people, which is Bill 52—

Mr. Randy Hillier: Well, I remember the Markham arena—I think it was over at the convention centre, the discussions on the white belt—and there were hundreds and hundreds, if not over thousands, of people who were there. The meeting went on well past midnight and there were people speaking on all sides of the subject. There was no shortage of discourse there at all. There was not agreement or consensus by any means.

But I want to just go back to you. Although OMB has been raised by many deputations today, really that's not a problem, the costs and time of using the tribunal?

Mr. Satinder Rai: I think I'd just rather speak to Bill 52, which is what we're here for today. As a separate—

Mr. Randy Hillier: Sure, yes, but you raised the OMB and it has been raised a number of times today, so I'm just—

Mr. Satinder Rai: I don't understand the question. Can you repeat that?

Mr. Randy Hillier: Is that an impediment to public discourse, the OMB?

Mr. Satinder Rai: No. I think the impediment to the discourse is threat. The impediment to action is the OMB. So the threat of taking a developer to the OMB, which is that potential action, is what instigates the type of coercion and threats that communities feel. It's cheaper to sue someone to shut up than to go through an OMB appeal for a developer.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier, and thanks to you, Mr. Rai, for your presentation on behalf of Sustainable Vaughan.

MS. PATRICIA FREEMAN MARSHALL

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward. Ms. Patricia Marshall, welcome. You've been very patient all day, I know. Please be seated, and your intro for five minutes begins now.

Ms. Patricia Freeman Marshall: Thank you for the opportunity to speak to you today. As a social justice advocate supporting women's equality and safety over a number of decades, law reform has been a significant focus of my work. I know one has to be patient with legislative initiatives. I've worked on eight criminal code amendments and a lot of provincial statutes, but this legislation is certainly no exception. I commend the

Premier, the Attorneys General and everybody who has brought us here today.

I helped convene the first anti-SLAPP legislation round table on June 4, 2007, in Ontario. Now, eight years later, I'm here today to urge passage of Bill 52.

Speech that should be protected has been silenced for far too long, and the drafters of this legislation have been so well served by the expert panel's work—their thorough foundational work gave a direction that is excellent. I believe that we've got a wonderful, fair balance between public participation and the protection of reputation and economic interests.

In advocating against violence over the years, I had no worry about defamation laws impacting me personally because I was so confident that my speech was so careful and so responsible. I was naming publicly, whenever I could, responses to violence that were inadequate, ineffective or inappropriate. For many years, especially in the 1980s and 1990s, I spoke out frequently, speaking truth to power, whether it was to judges from many countries speaking about judicial misunderstanding of sexual assault, or naming Canada for human rights violations in its inadequate responses to violence against women.

Then I witnessed a SLAPP in action: the one that Marilou McPhedran spoke about this morning. We had both worked on several task forces; we had been colleagues for some time. You heard about the personal costs. From involvement in her fundraising, I know that her legal costs exceeded \$300,000. If Bill 52 had been in place, that suit would surely have been shut down very early.

I came to appreciate, from that, that my own careful responses would be no defence against such a use of the current law, and with my own health compromised by decades of heartbreaking work with thousands of abuse survivors, I decided to stop speaking publicly. I cut out my advocate's tongue. This libel chill that is invisible to most does have faces, and one of them is mine. It's been agonizingly real for me, as I know it has been for others.

Two levels of courts ultimately vigorously denounced the positions taken by the Ontario Medical Association. I wish I had time to read from those decisions today, because they were so educative. With many of us silenced, these excellent decisions did not receive publicity at all.

It is not in any of our interest to silence speech that would promote safety of the public or protection of the environment. You have an opportunity now to close down a practice that does not serve us well. I urge you to support this bill. I thank those of you in advance who will champion this urgently needed legislation.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Marshall. To the government side: Ms. Naidoo-Harris, three minutes.

Ms. Indira Naidoo-Harris: Thank you very much for coming in, Ms. Freeman Marshall. I want to start by congratulating you. I understand you were a winner of the Order of Ontario in the past.

Ms. Patricia Freeman Marshall: Yes, I was, 12 years ago, for social justice work. Thank you.

Ms. Indira Naidoo-Harris: It's pretty clear to me that you feel strongly about this bill and are in support of it. If you don't mind me asking, can you tell me what it is about this bill that you like?

Ms. Patricia Freeman Marshall: I think the idea of having this early time, within 60 days, to look at and decide the merits and to see if the action is frivolous or not. The awarding of costs: I think the committee did an excellent job in saying that one shouldn't look at motive; that that is not going to take us in the right direction.

I think there is faith in the judicial discretion that is there, and having been involved—I've been an invited member of the society for the reform of criminal law in common law jurisdictions, so I've been doing a lot of law reform work. Really, to see the kind of preparation that went into this, you can imagine from that first round table, that the expert panel's work was so excellent. I think we in Ontario are all so well served by that—and the decision to support their recommendations.

Ms. Indira Naidoo-Harris: Thank you very much. Just one final quick question: This is about making sure we prevent the misuse of our court system. Do you feel this bill has been successful in addressing this issue?

Ms. Patricia Freeman Marshall: I do. The deep pockets, the cost of doing business that corporations have set out and the unfairness of some of the actions I have seen—I think there has been a large legal loophole, and this bill goes a long way to closing that in a very specific way.

Ms. Indira Naidoo-Harris: Thank you very much.
The Chair (Mr. Shafiq Qaadri): To the PC side: Mr.
Hillier.

Mr. Randy Hillier: Thank you very much for being here today. I want to just ask you: We've heard from a number of people who are either generally supportive or very supportive of this bill that there still is potential abuse that may happen. We all want to have an early mechanism to dismiss cases that don't have merit, and we also want it to be done timely and cost-effectively. However, there have been those statements that the tests that are incorporated in this bill may not be substantial enough, that some cases that have been demonstrated today, where people or organizations have engaged in where people or organizations that have engaged in misleading words and activities, deception or falsehoods, may be allowed to continue to engage in those sorts of activities of promoting misleading statements and falsehoods—do you have any concern that, in our desire to promote greater public discourse, the door is being opened a little bit for defamation to happen without any penalties or consequences?

1650

Ms. Patricia Freeman Marshall: Well, in the past, I have often been very critical about judicial understanding of issues like sexual assault, and I've studied this very carefully. I've promoted the judicial education programs that are now in place, but I also have confidence in judicial discretion, and I think if there's a dishonest practice that comes before one of our officers of the court, that will be picked up quite readily.

Mr. Randy Hillier: When there is discretion, but if there is legislation that provides the actual test that the courts have to abide by, then the discretion is limited.

Ms. Patricia Freeman Marshall: Yes, there are limits on the discretion, but I think, with the example that you are giving now, that one, the officer of the court—the judge—would be able to—

Mr. Randy Hillier: You don't think the test should be strengthened, then, to prevent undue or misleading, false and dishonest statements?

Ms. Patricia Freeman Marshall: Well, I think that would be presented. That is what the process is, and evidence will be presented.

Mr. Randy Hillier: Yes. We've heard from other people in the legal professions that this present legislation, the way it's worded, could possibly allow those activities to go on and the—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. The floor now passes to Mr. Singh of the NDP.

Mr. Jagmeet Singh: Thank you very much, Ms. Marshall, for being here today. I just wanted to take this opportunity to ask you: You had mentioned that there were some excerpts, perhaps, of the judgment that you might want to share with us. Perhaps you could share some that would provide some insight into how the case was determined or some of the context of how—

Ms. Patricia Freeman Marshall: Yes, both Marilou McPhedran and I felt that some of the decisions of the Ontario Medical Association needed to be publicly commented upon, and we did that. In fact, Justice Ed Then noticed that the cases the OMA argued for both arise in the context of labour relations and deal with the right to bargain collectively. He said they don't support the argument that section 2(d) of the charter extends to the right to have sexual relations. The kind of stretching that there was in the case—Justice Blair of the Court of Appeal supported the zero-tolerance policy prohibiting sexual relations between health professionals. That's legislation that we had recommended in our first task force report, and he talks about the fact that in the context of a regulated health profession, the liberty and interest cannot extend to the point of a doctor's right to decide to have sex with a current patient. This is the kind of argument that was going on, and, as a result of the lawsuit, the discussion of that, which I think would have been in the public domain and been useful to have in the public domain, was shut down for all of us.

Mr. Jagmeet Singh: What was the impact to you personally of being faced with this, or having a close friend faced with this?

Ms. Patricia Freeman Marshall: It was devastating, because I had felt my work was on the side of the angels, and I was fearless and felt fearless for a number of decades. That was shut down. The cost to myself and to my family, I felt—I literally wouldn't have survived it, physically, and so I made that decision to cut my advocate's tongue out.

Mr. Jagmeet Singh: Thank you very much for sharing.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh, and thanks to you, Ms. Marshall, for your deputation.

MR. PHILIP DEMERS

The Chair (Mr. Shafiq Qaadri): I'll now invite our next presenter to please come forward: Mr. Philip Demers. Welcome. Please be seated. You've seen the protocol. Your five minutes begin now.

Mr. Philip Demers: Thank you. My name is Philip Demers and I am a former employee of Marineland Canada. In 2012, shortly after leaving my employer of 12 years, I received a call from an investigative journalist who asked for comment with regard to my experience.

After much introspection and many sleepless nights, I obliged. In total, 15 whistle-blowers would step forward, most anonymously for fear of legal reprisal, to take part in an exposé that would trigger large-scale political debate and international conversation largely centred on the lack of laws, regulations and standards of care for marine mammals in Ontario.

Today I sit here proud to say that after delivering a petition with over 110,000 signatures and working diligently with those involved in the process, this government is poised to enact the very laws we sought back in 2012. In an effort to stifle our advocacy, Marineland began to launch what can only be described as frivolous and erroneous lawsuits targeting myself, former orca trainer Christine Santos and animal care supervisor Jim Hammond. They have also sued activists, media and have threatened countless more.

Consequently, I'm defending against a \$1.5-million lawsuit for plotting to steal a walrus—a spurious claim, to say the least. We, like most Ontarians, were of the belief that you could not be sued in defamation, as long as you told the truth; and the truth we told. But that doesn't deter someone from filing lawsuits, as we have come to learn.

Thus far, in over three years, not a single one of the lawsuits has even so much as gone to discovery, and in all likeliness, none will. On May 1, 2013, I launched a countersuit against Marineland that they, to this day, have not defended.

All of the lawsuits are being strategically drawn out through an expensive and emotionally taxing process with the sole intention of crushing our fiscal sovereignty, and it's working. My latest round of legal bills totalled more than I will earn in 2015 and all said thus far, in excess of \$100,000. This isn't a process seeking justice; this is revenge.

Every day this drags further is marred with anxiety. Back too are the sleepless nights. My girlfriend and I had plans and endeavours to fulfill. Those opportunities are vanishing. We struggle to plan for the future without our dreams being clouded over by the constant struggle to defend against a process that inherently punishes, despite its glaring frivolity.

Despite not wanting Marineland to know the details of our suffering, I will say that these lawsuits are ruining our lives. For all intents and purposes, their objective has already been met, yet they intend on imposing many more years of this revenge.

The natures of our lawsuits are the very reason why anti-SLAPP legislation has been tabled: We have done nothing wrong, we have not broken laws and we are not criminals, though this feels like imprisonment.

It's unbearable to think that this historic bill, as currently written, will not apply to the very people who have largely inspired it. I cannot fathom a process where we arbitrarily have to defend against what will soon be considered illegal lawsuits, on the basis of procedural fairness to the people who are already proceeding with unfair cases. If a lawsuit is frivolous and vexatious, then it does not have a place in our judicial system to begin with.

We need to have a piece of legislation that allows a judge to decide our fate, not a poorly written bill, because if this bill passes as it stands, then our fate is largely determined. Passing this bill without it applying to us is a monumental mistake, as it empowers and rewards bullies and abusers—something Ontarians should and would be ashamed of. So it is imperative to make this bill retroactive.

Marineland's lawsuits are an abuse of process that has already cost Ontarians hundreds of thousands of dollars. Furthermore, we don't deserve this prolonged and arduous assault. We did the right thing by Ontarians, and now it's time for Ontario to do the right thing for us.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Demers. I will begin with the PC side. Mr. Hillier.

Mr. Randy Hillier: I agree with you. I think the retroactivity—if there is an abuse of process in a suit without merit—to leave people to deal with that is unfair and unjust. I will say that I do believe that in law, what's good for the goose should be what's good for the gander here as well.

I believe that we need to have a little bit more of an impartial test to ensure that there is bad faith, so that we don't get the case of—in your case, your employer or anybody else defaming you or slandering you and you not having the ability to defend yourself against that.

1700

We haven't heard any good arguments yet why retroactivity has not been included—why it was withdrawn. Hopefully, through these committee hearings, we will get to that nub and find out if we can get an amendment on it

Mr. Philip Demers: That would be a dream come true. That would be essentially our last chance. That's where we're at.

Mr. Randy Hillier: If it doesn't happen, then you are forever in that purgatory. There is no defined end to what can happen or how long it will happen, but your ability to seek a remedy afterward will not be available to you.

Mr. Philip Demers: It will ruin our lives.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. To the NDP: Mr. Singh.

Mr. Jagmeet Singh: You've done it already, but could you explain what it feels like having this out-

standing lawsuit, and how important it is for you to be able to know that there will be some resolution? How difficult is it living with this unresolved lawsuit? You talked a bit about it—it impacts you; it impacts your family plans—but use this as an opportunity to tell a little bit more about how negatively it impacts you.

Mr. Philip Demers: I summarize it as feeling like imprisonment. We feel like we are in a prison. We're shackled, and there is no moving—

Mr. Jagmeet Singh: Sorry, what do you mean by that? How do you feel that you're being imprisoned?

Mr. Philip Demers: Well, you're no longer able to make any plans for life. You can't make any financial decisions. You can't foresee any type of end to this.

We get calls from our lawyers, and some of the numbers they are throwing at us—these are absurd numbers. Again, I stress that my last bill was more than I will make in 2015. It's inconceivable for us to continue this process, at which point Marineland wins. I don't know how it ends exactly; I suppose bankruptcy is our only option.

Mr. Jagmeet Singh: What type of effect do you think this has on other people who now see you and see what you're going through for having raised your voice? You fought a very valiant battle, but beyond that, what do you think the impact is brought on society?

Mr. Philip Demers: We've been isolated from many people, of course. People, media especially, have shied away from speaking about Marineland in any way, shape or form. And of course it has affected our family and everything else, because they want to support us, but it's inconceivable for them. Even within our network of people, we couldn't put together a cumulated net worth to come up with the funds to fight this.

We're in excess of \$100,000, three years in, and my lawyers are telling us that we have four or five years ahead at best, and we haven't even scratched the surface with the motions that are being put forward. Everything that is being done is a means to delay and increase the costs, and there's no way out. There's just no backing out. There's nothing for us to rely on to have a judge look at it and determine the legitimacy of it all.

Mr. Jagmeet Singh: You know that this bill would propose a 60-day mechanism to dismiss actions that are frivolous. How would that impact you?

Mr. Philip Demers: It would be a dream come true.

Mr. Jagmeet Singh: Thank you. Mr. Chair, no further questions.

The Chair (Mr. Shafiq Qaadri): To the government side: Mr. Delaney.

Mr. Bob Delaney: I believe that all the questions I was going to ask the witness have already been asked and answered.

The Chair (Mr. Shafiq Qaadri): That is quite fortunate, Mr. Delaney.

Thank you very much, Mr. Demers, for your presentation and deputation.

ENVIRONMENTAL DEFENCE

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter to please come forward: Mr. David Donnelly, legal counsel for Environmental Defence. Welcome. Please be seated. You've seen the protocol. Your five minutes officially begin now.

Mr. David Donnelly: Thank you, Mr. Chair and committee members. My name is David Donnelly, representing Environmental Defence.

Environmental Defence is one of Canada's leading non-profit charitable environmental organizations. One of the features of our work is that we partner with community groups in defence of the environment against urban sprawl, unnecessary infrastructure and the destruction of our prime agricultural land. Over the past 30 years, we have worked with over 100 citizens' groups in this capacity, providing funding and legal and scientific expertise. In those endeavours, we have worked with and supported a number of groups that have been the targets of SLAPPs, so we are very familiar with this process.

Really, the drive to create SLAPP legislation starts and ends with the Big Bay Point mega-marina up on Lake Simcoe, which I'll be turning to later in my remarks. You have heard from others, about this bill, that it has substantial merit, and it does. In particular, Environmental Defence supports other groups in their submissions that the definition of "protected activity" be sufficiently broad, that the test for early dismissal of SLAPPs is clearly set out, and we support that the remedies that are offered will act as a deterrent.

Conversely, it is our position that Bill 52 has several significant limitations. First, as you have heard, there is no public policy reason to not make this bill retroactive. Free speech is eternal; it doesn't have a deadline. Any litigation that is before the courts is subject to any motion at any time. Applying this legislation is fair and just to any cases, not just those contemplated in the future, provided those cases are frivolous.

Second, the remedies that are available to court could and should be broadened to include targeting directors directly who bring these suits.

Finally—this will be the focus of my remarks—the bill should further restrict parties from bringing adverse cost awards as punitive proceedings before administrative tribunals, specifically the Ontario Municipal Board. The expert task force recommended that the Ontario Municipal Board and other tribunals be limited in terms of their cost proceedings to written submissions only.

The primary reason for doing so is that the viva voce hearings, when everybody gets dressed up in their gowns and they show up with lawyers, can drag on for weeks and months. In my case, when I was the target of a \$3.2-million SLAPP suit and adverse costs were considered as an award, that proceeding dragged on for 17 and a half days that lasted over 14 months. The actual hearing on the costs was almost as long as the hearing on the application for a billion-dollar marina development on the shore of Lake Simcoe.

Just to add a little bit of colour, I have provided an excerpt from the Globe and Mail to give you a picture of the Dickensian scene when you happen into a hearing room where your entire life savings are at issue over a frivolous claim. In my case, it was the claim that I had conducted myself in bad faith and had tried to lose the hearing. John Barber wrote in the Globe and Mail at the scene, "All the other appurtenances of official solemnity are in place, including no fewer than 15 lawyers crowded into dishevelled ranks amid a slum of cardboard boxes, lava-flows of thick tabulated binders covering every surface and much of the floor, the leftover spaces occupied by little chromed trolleys in a state of apparent exhaustion, bungees slack and tangled."

That scene of 15-plus lawyers was something that I lived through, and it sounds funny when you see it written there, but the consequences of being caught up in that suit were these: First, I lost approximately 14 years of my life, tangled up in motions and hearings. Second, the Gilbert's law firm, where I worked, closed its environmental practice and I found myself out of a job as the entire firm and the principal were also the target of this \$3.2-million SLAPP suit launched against me and Tim Gilbert personally. I had to take a trip to my lawyer's office to put all my assets, including our house. into my wife's name for fear, if the case was successful, we would lose everything. Finally, I had to explain to my children, who were then aged one, five and seven, why daddy would often be found crying at night: because my entire career as an environmental advocate was on the line, because if the finding had been made against me, I might have lost my licence.

The Chair (Mr. Shafiq Qaadri): Thirty seconds. Mr. David Donnelly: I didn't deserve that; nobody deserves that.

This bill has been stripped of the provision taking away the power of developers to tie up people at the Ontario Municipal Board, and it shouldn't. We should have an explanation of why that has been removed. It hasn't been removed for a good public policy reason.

These cases before the Ontario Municipal Board are dragging on. In the case of Preston Sand and Gravel, a \$220,000 adverse cost award stays outstanding and has been for 15 months. That hearing lasted three days, and yet the proponent is seeking a quarter-million dollars—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Donnelly. I pass the floor now to Mr. Singh of the NDP.

Mr. Jagmeet Singh: Sir, please take the time to finish what you were saying.

Mr. David Donnelly: Thank you.

The Ontario Municipal Board has failed to issue a decision in that case. It has been 15 months since May 26, when Preston Sand and Gravel sought this extraordinary \$220,000 claim.

There are many people who wished to appear before this committee here who contacted Environmental Defence to voice their support, but said that they would not be attending for fear (1) of violating a settlement agreement that they had with the proponent in a SLAPP suit, or (2) that anything they might say here might be used by a developer in the future to sue them all over again, and they didn't want to live through that night-mare.

There's one last area that is not covered by the bill that I think the committee should consider, and that is that at this very moment, there are a number of mayors and councillors in small-town Ontario who are fighting urban sprawl who have been threatened by developers. They are afraid to go to public meetings. They are afraid to speak out at council. They have been threatened with hundreds of millions of dollars in lawsuits.

Each year, each election cycle, the province of Ontario, through the Ministry of Municipal Affairs and Housing and the Attorney General, issues a municipal councillor's guide that outlines for councillors and mayors what they can expect and how they should conduct themselves. The Attorney General should endorse our recommendation that a circular be sent that explains to municipal councillors and mayors that they have been elected for the explicit purpose of speaking their mind and speaking out against development. The Supreme Court of Canada has issued a number of decisions that say it is not only their right but their duty to speak out against development, and that they should be further protected from these kinds of SLAPP suits, which this bill will do, but that information needs to get out.

So with that, those are my submissions.

Mr. Jagmeet Singh: Thank you, sir. Can you just touch on the clause that you indicated was removed with respect to the OMB? Can you flesh that out a bit more?

Mr. David Donnelly: At the end of an Ontario Municipal Board hearing, any party has a right to seek costs against any other party. Almost inevitably, the developers will either threaten costs or bring a motion for costs against the party that spoke out against the development.

It is the practice of the Ontario Municipal Board to take most of these claims in a hearing format. You have to file submissions first that are written, and then you will have oral arguments. Sometimes the argument is short; sometimes it drags on for days. Every day that you have lawyers gowned up, making submissions, costs anywhere from \$10,000 to \$15,000. If you have a three-day hearing on a cost motion, it can cost between \$50,000 and \$100,000 just to hear the claim on the merits. Most of these claims are dismissed. In my own case, the claim was for \$3.2 million. It included claims for such things as ice, a bucket, the legal fees and a \$5.99 piece of chocolate cake from Boston Pizza in Barrie, Ontario. The cost of defending that suit was enormous because of the time that it took. If that hearing had been done in writing, it would have cost far less.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. To the government side: Mr. Potts.

Mr. Arthur Potts: Thank you, Mr. Donnelly. It's delightful to see you here. Chair, as a matter of conflict, David is a good friend.

I would be delighted to hear you continue on the OMB issue. We've heard many deputants today who are very concerned about the issue around cost to the OMB, but it's the threat of excessive cost that acts as a chill for them. How would that be addressed in this bill, or would it be?

Mr. David Donnelly: Thank you, Mr. Potts. The first thing is that the Statutory Powers Procedure Act should be amended to require that hearing costs at the Ontario Municipal Board or any other tribunal be conducted in writing only—by and large the way the courts do it—and it will effect justice.

Second, in terms of the reform of the OMB process, the claim for costs should be vetted at the outset of a hearing. It shouldn't last 15 months, 14 months. At the close of a hearing, if anyone has a claim for costs, they should be required to state the claim, and the board should make an initial ruling so that these things don't drag on through applications and so on.

Finally, the Attorney General should establish capacity so that when these frivolous claims are made, the Attorney General can intervene in the cases and defend people who are being unfairly SLAPPed and, in fact, carry the case.

Mr. Arthur Potts: We've had a lot of testimony about the difference between a public interest test and a bad faith test. The public interest test may be too narrow, that some claims or slanders would be dismissed rather than moving forward. Do you think that this bill, under the public interest test, would provide a licence to slander to opponents of projects?

Mr. David Donnelly: I'm glad you asked me that question. The history of Ontario and public advocacy in Ontario has a few examples where people have genuinely slandered or defamed developers. In those cases, courts have hundreds of years of common law to establish what is, in fact, defamation or libel. I have never seen a case—and I've been involved in hundreds—where a citizen who was truly speaking their mind has ever said something that could truly be considered defamatory. You just have to look at the case law. How many judgments have there been for defamation, libel or slander against citizens' groups? There are almost none.

I think anything that protects the public and speech is good. Any definition that makes it extremely difficult to bring a frivolous or unmeritorious case is good. For anything that tramples on the legitimate or long-standing tradition that we have of holding people accountable for libel and slander, the law is already in place and has been for 300 or 400 years, to deal with it.

Mr. Arthur Potts: So as the legislation is now written, it meets that test satisfactorily to you? Would you just keep those tests as they are?

Mr. David Donnelly: Yes. Mr. Arthur Potts: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts. To the PC side: Mr. McNaughton.

Mr. Monte McNaughton: Just one quick question, I think. What other jurisdictions have anti-SLAPP legislation in Canada?

Mr. David Donnelly: British Columbia had a bill that was rescinded. Quebec has a bill, I think, that has a lot of merit to it. There are, at last count that I saw, 28 states in the United States that have a similar—usually it's some kind of libel shield.

Mr. Monte McNaughton: Why was BC's rescinded?

Mr. David Donnelly: My understanding is that the politics, or the political party, had changed, and with it went the bill.

Mr. Monte McNaughton: And concerns—economic loss and things too, I understand. Thank you very much. No further questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. McNaughton. Thanks to you, Mr. Donnelly, for your presentation and deputation today.

RURAL BURLINGTON GREENBELT COALITION

The Chair (Mr. Shafiq Qaadri): I'll invite our next presenters, who include a PowerPoint: Mr. Dennis and Ms. Warren. Please come forward. Your time officially begins now.

Ms. Vanessa Warren: Thank you. I hope the volume is loud enough.

Video presentation.

1720

Ms. Vanessa Warren: Community advocates are the small percentage of affected people who stand up and speak out on a matter of public interest.

Mr. Monte Dennis: SLAPP suits are directly intended to knock them down, silence those they represent, and discourage anyone from standing beside them or taking their place.

Ms. Vanessa Warren: Monte and I volunteered in our community for all the right reasons, and we engaged in all the right ways with the media and the appropriate levels of government. We were careful to balance our passion with reason and fact-based information. But none of that matters, and it won't matter until months from now, when we stand up in front of a judge, because SLAPP suits favour the plaintiff.

Mr. Monte Dennis: We are guilty until proven innocent. Now our time and resources, emotional and financial, are being exhausted, and dialogue on a critical environmental matter in our community has been suppressed, exactly as intended by the corporation that SLAPPed us.

Ms. Vanessa Warren: Corporations don't have feelings, and they don't have to prove financial harm. They can hire PR firms and lobbyists and marketing companies, and they can even write off their legal fees. Should a corporation's interests ever trump free expression and dialogue on a matter of public interest?

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Monte Dennis: Help us. We were SLAPPed in April 2014, and we still have months of legal work and legal bills ahead of us before we are out from under this

yoke. Please reintroduce the retroactivity clause so that Vanessa and I can get before a judge as soon as possible.

Ms. Vanessa Warren: Please make Monte and I the last SLAPP victims in Ontario.

The Chair (Mr. Shafiq Qaadri): Thank you, and thanks for your precision timing. We'll go to the government side to begin with. Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I want to start off by thanking you, Mr. Dennis and Ms. Warren, for coming in today and letting us know about your situation. I'm familiar with the case, but I do appreciate you coming in and sharing that video with us.

I'm going to go straight to the retroactive questions, because I think that what you were pointing out is key to some of the points you want to make here today.

Since this legislation is about fairness and balance, I want to know your thoughts on the retroactivity aspect of things. Do you believe this would be a fair approach for individuals and groups who have ongoing litigation?

Ms. Vanessa Warren: Yes, I think it's absolutely necessary. The protections are very, very important. In either case, it's critical moving forward.

But I think the idea that Bill 52 could be enacted and Monte and I could still be months and months away—something no one has addressed today so far, that I've heard, is not just the chill but the idea that people who don't understand SLAPP and libel and defamation law—a lot of people in the community think, when they hear this, or just sort of glance through it, that we actually have defamed someone or committed some crime. If we're left out and left behind by this act, I think that might just help create that sort of false perception even more, that we actually did do something wrong, and we did not. We simply acted in good conscience on a matter of public interest.

Mr. Monte Dennis: I don't think that you can pick an actual date, how far back you go for retroactivity. I think you have to cast a broader net. Anybody who has a case that hasn't been settled should fall under the retroactivity. Because when you set a date, if you miss that date by one day, it's a problem.

Ms. Indira Naidoo-Harris: The intention of this bill is to protect people's freedom of speech and their right to have their opinions heard, while ensuring that there isn't slander going on. Please tell me: How important is this bill, do you think?

Ms. Vanessa Warren: I think it's incredibly important, and I think it's going to become more and more important as the tension between rural-urban boundaries increases as we grow and as developers become more—I think this is only going to become a greater problem. I think that this will solve the issue, to a large part. I think the OMB is also critical. We've heard about some reform that has to happen there. But I think it's absolutely critical.

I will not be able to participate again in my democracy if it doesn't pass. I can't. I didn't know the risk existed, and it's enormous. You heard from Philip Demers. Certainly, the cost to me is not going to be as large,

potentially, but it's enormously draining. You can't build a business; you can't build a life; you can't participate in your democracy. It's absolutely devastating, that you cannot participate in a democracy.

Ms. Indira Naidoo-Harris: Can I ask you—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. The floor now passes to Mr. McNaughton, on the PC side.

Mr. Monte McNaughton: Thank you very much for presenting today. We don't have any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. McNaughton. To you, Mr. Singh, of the NDP.

Mr. Jagmeet Singh: Wonderful presentation. Thank you so much for that. It really drove the point home very well. Thank you.

Just a couple of quick points: On the retroactive element, can you just give your comments on that? It has been removed in this bill. Do you feel like it should have been removed? Or do you feel like it—

Ms. Vanessa Warren: No, again—sorry, Monte. Do you want to answer that?

Mr. Monte Dennis: No, it should be reintroduced. We should have retroactivity. There is no question about that.

Mr. Jagmeet Singh: And in terms of limitation, is there a limit on how far back we should go, or should anyone who is facing a strategic lawsuit in Ontario be protected by Bill 52?

Ms. Vanessa Warren: The further back it goes, the more they need the protection of this bill. So much of this tactic is about heel-dragging. There has to be a 60-day solution for anyone.

Mr. Jagmeet Singh: Excellent. And are there any other specific amendments to this bill that you would like to see?

Mr. Monte Dennis: Not offhand. I can't think of any. Mr. Jagmeet Singh: No problem.

Ms. Vanessa Warren: I would like to never see an amendment that said that an organization that passed some tipping point in funding would not receive the same kind of freedom-of-expression defence.

Mr. Jagmeet Singh: Good. I was going to ask you about that. There was discussion around certain organizations, based on their size, being afforded the protection or not afforded the protection. Your opinion is that everyone should be afforded the protection?

Ms. Vanessa Warren: Well, I would suggest that if a group is well funded, more people believe in its right to express itself, and therefore you're really infringing upon a democratic process.

Mr. Jagmeet Singh: Nice. And—what was my other question? No, I think that covers everything. Thank you so much for your comments. I appreciate it.

Ms. Vanessa Warren: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Dennis and Ms. Warren, for your deputation on behalf of the Rural Burlington Greenbelt Coalition.

Mr. Monte Dennis: Thank you.
Ms. Vanessa Warren: Thank you.

OXFORD COALITION FOR SOCIAL JUSTICE

The Chair (Mr. Shafiq Qaadri): I invite forward our final presenter of the day: Mr. Bryan Smith, chair of the Oxford Coalition for Social Justice. Welcome. You are our final presenter of the day. I invite you to please begin now.

Mr. Bryan Smith: The Oxford Coalition for Social Justice is a community group in Oxford, Ontario, whose mission is to address issues which affect the quality of life of residents of our county, the province and the country, as well as international issues where our voice may bring positive social change. While environmental issues are at the top of our agenda currently, our active participation in health care, popular education, social justice, aggregate regulation, multi-faceted sustainability and other issues continues to make us SLAPPable.

As a small community organization, we are volunteers drawn from all ages and many sectors. Some members also represent other groups.

The Oxford Coalition for Social Justice believes that our voice is important for our local community and that our work in good faith there and in broader contexts is for the good of all. It is in that vein that we respectfully submit this commentary to the proposed Protection of Public Participation Act, with thanks to the committee for organizing these hearings.

The Oxford Coalition for Social Justice believes that it is in the public interest for individuals and groups to participate actively, frequently and without fear in public discussion. That is why we applaud the opening statement of purpose of the proposed legislation. In fact, matters of public interest naturally lend themselves to public comment, which in a democracy needs to be free, ongoing and wide-ranging.

Further, the intent of the act, "to discourage the use of litigation as a means of unduly limiting expression," is necessary in cases where an individual person or a person as a representative of a community group may find herself to be pitted against another interest which under Canadian law may have the status of a person but in fact be a large corporation with financial and other means to bring tremendous pressure to bear not only on public opinion but on that individual. There is no balance between small community groups and often larger corporate interests without protection for those individuals. Although it appears to be outside this act as currently written, it would be a good thing for the establishment of intervener funds for individuals and groups who seek knowledge and try to inform others around community issues by "communication, regardless of whether it is made verbally or non-verbally.'

As a community group with an interest in environmental issues, as chair of the Oxford Coalition for Social Justice, I was a participant in consultations run by this same Parliament around the use of neonicotinoids and their effects on pollinators and other species. I am aware that the European Union was sued by the makers of these chemical pesticides. Either side of that lawsuit has finan-

cial means beyond my own \$1.49, beyond the coalition, and indeed beyond the groups with whom our coalition is allied and possibly beyond those of the province. How far or whether engaging in good faith in those consultations, in conversation and publication puts me at personal risk is an assessment that in a free and open democracy should not be a consideration. So far, I've not been threatened unduly.

Parliamentary democracies are made possible by the right of individuals to speak for themselves and for the public, so that in the Legislature there can be full and open debate on subjects of importance. Providing members of the provincial Parliament with levels of immunity for statements they make in the public interest and to give voice to the public's wishes is a requisite part of democracy. How could MPPs speak of the public's wishes if there were an impediment to the public expression of those wishes?

It follows that the public must also have some immunity to the threat of harm if a person or group speaks up on an issue in their community. Otherwise, that would mean that the work of the Legislature would be hampered and your only motivation in an extreme case would then be personal interest, which is unthinkable, or avoidance of a whip or mace, either literal or figurative. The excessive use of either of these is obviously undesirable.

It's a challenge for community groups to organize in order to research an issue, to analyze the research, to select the key arguments and then get them in the ear of the public, the media and decision-makers. This morning, at a picnic with cows on the lawn of the Legislature—for that to happen, a lot of work and planning was done, including liaison with some officers of the law. For many individuals, even that would constitute a barrier to expression.

So SLAPP suits are not the only limit of the public's expression; cost awards in the OMB would be another.

Sometimes I wonder if the reason why people are so happy to have me speak for them is because they want to mitigate their risk. If that's the case, then the current law does prevent some level of public participation: theirs.

I'm skipping to the next page.

Further, the notion that a report of a statement or other communication by a witness or media can lead to an individual being pursued for vast sums of money by deeppocketed corporations has layers of problems. Media are omnipresent in the age of hand-held devices which can capture every word—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Bryan Smith: —so even a supposedly private remark can be published instantaneously. Something spoken in jest, haste, anger or frustration could be taken as a considered view. Witness multiple federal representatives.

The Oxford Coalition for Social Justice has little experience with the court system and hopes to keep it that way. Our group, however, has much experience from over two decades of popular education. We hope to

continue to do that and be allowed to do that because there will be retroactivity and because there will be intervener funds that will protect us and other groups in this democracy.

I thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr.

To the PC side: Mr. McNaughton; three minutes.

Mr. Monte McNaughton: I have no questions. Thank

The Chair (Mr. Shafiq Qaadri): To Mr. Singh; three minutes.

Mr. Jagmeet Singh: You mentioned that you're concerned about the retroactivity that doesn't exist in this bill, so you'd like to see that be reintroduced.

Mr. Bryan Smith: Absolutely.

Mr. Jagmeet Singh: And in terms of any other

amendments you'd like to see, specifically-

Mr. Bryan Smith: I would like to see that this bill or some other bill would introduce intervener funds for community groups so that they are somewhat more able to bring together the legal, media and other means that major corporations do when they want to influence the public.

Mr. Jagmeet Singh: In terms of different-sized organizations, do you think that the size of the organization should reflect the amount of protection that organization

gets or does not get?

Mr. Bryan Smith: The first thing I would argue is the principle of being equal in front of the law. That would be an argument on principle, I think, that would be a

I would also suggest, as previously said, that a large organization gets its funds from a large number of people, so it's a sort of financial democracy in a sense.

Those organizations to which I send \$20 and other people send \$20—that means lots of people send in \$20, if they have a large budget.

The last thing I would say on that is that a budget of an organization-for instance, ours-would be significantly larger were we sued because then the value of the lawsuit would be the value of our budget. So if some company sues me or our organization for \$17 million, suddenly I'm a \$17-million organization, or bankrupt.

Mr. Jagmeet Singh: Interesting. Thank you very much for that. I appreciate it.

Is there anything else you'd like to add in the last minute or two?

Mr. Bryan Smith: I would just suggest, as well, that we've had a lot of discussion about misleading statements, and I would really hope that we continue to have the right to make statements and even to err in good faith, because we are still human. So maybe at some point someone would say, "I really wonder about what's going on with those diesel motors in those Volkswagens"-or some other sign.

Mr. Jagmeet Singh: Good one.

The Chair (Mr. Shafiq Qaadri): To the government

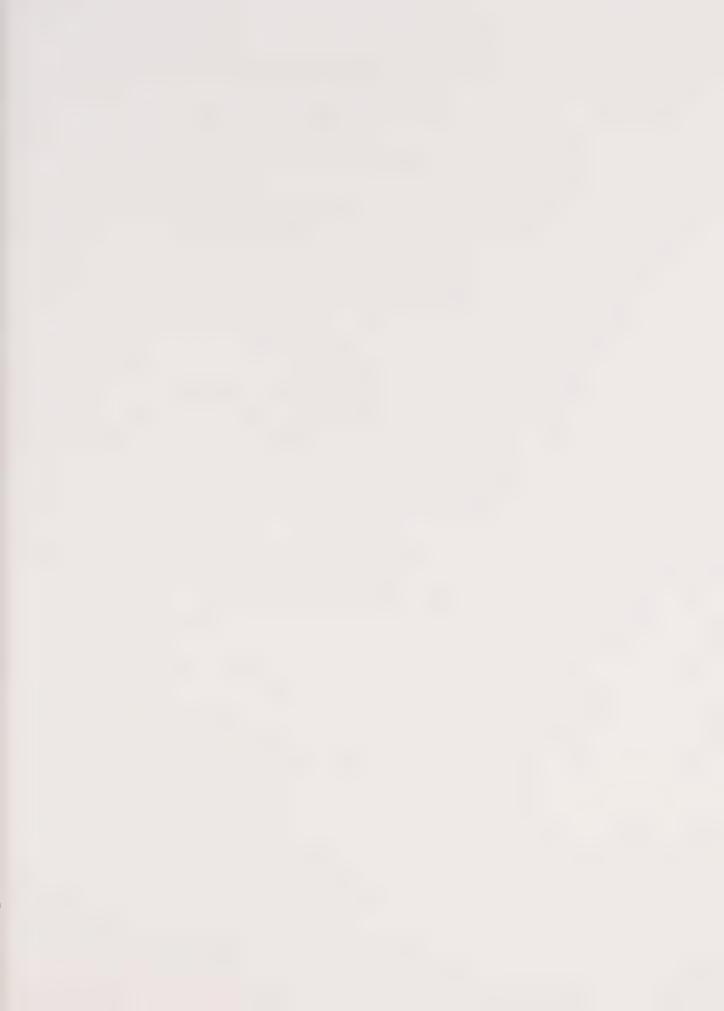
Mr. Arthur Potts: No questions. Thank you very much.

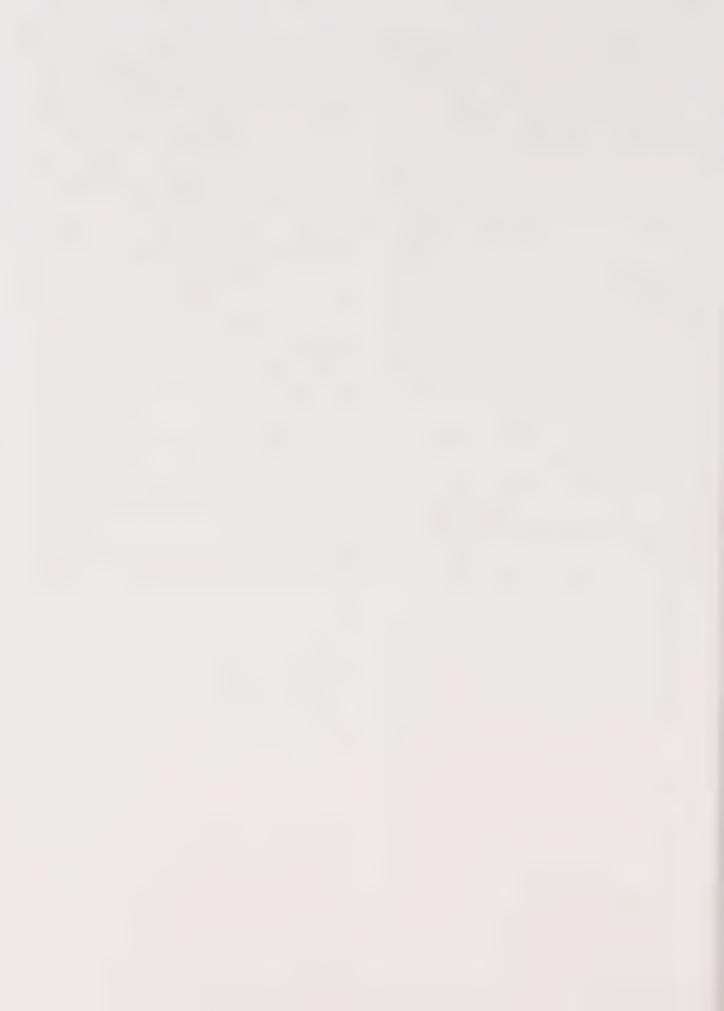
The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Smith, for your deputation on behalf of the Oxford Coalition for Social Justice.

Mr. Bryan Smith: Thanks to the panel.

The Chair (Mr. Shafiq Qaadri): The committee is now adjourned till 9 a.m. on Thursday, October 1, for round two of Bill 52.

The committee adjourned at 1735.





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Also taking part / Autres participants et participantes

Mr. Norm Miller (Parry Sound–Muskoka PC)

Mr. John Vanthof (Timiskaming-Cochrane ND)

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Première session, 41^e législature

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Thursday 1 October 2015

Journal des débats (Hansard)

Jeudi 1^{er} octobre 2015

Standing Committee on Justice Policy

Protection of Public Participation Act, 2015



Comité permanent de la justice

Loi de 2015 sur la protection du droit à la participation aux affaires publiques

Chair: Shafiq Qaadri Clerk: Tamara Pomanski Président : Shafiq Qaadri Greffière : Tamara Pomanski

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 1 October 2015

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 1^{er} octobre 2015

The committee met at 0901 in room 151.

PROTECTION OF PUBLIC PARTICIPATION ACT, 2015 LOI DE 2015 SUR LA PROTECTION

DU DROIT À LA PARTICIPATION AUX AFFAIRES PUBLIQUES

Consideration of the following bill:

Bill 52, An Act to amend the Courts of Justice Act, the Libel and Slander Act and the Statutory Powers Procedure Act in order to protect expression on matters of public interest / Projet de loi 52, Loi modifiant la Loi sur les tribunaux judiciaires, la Loi sur la diffamation et la Loi sur l'exercice des compétences légales afin de protéger l'expression sur les affaires d'intérêt public.

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Colleagues, I call this meeting of the justice policy committee officially to order. As you know, we're here to consider Bill 52.

We have five minutes for opening remarks to be followed in a rotation of three minutes each by each party. The time will be enforced with military precision.

One issue as well, amendments due to the Clerks' office: The deadline is tomorrow, 12 noon, Friday, October 2, and of course in hard copy.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Chair (Mr. Shafiq Qaadri): We'll begin with our first presenter, Ms. Ramani Nadarajah, counsel of the Canadian Environmental Law Association. Welcome, Ms. Nadarajah. Your time officially begins now.

Ms. Ramani Nadarajah: Thank you. My name is Ramani Nadarajah. I'm counsel with the Canadian Environmental Law Association. CELA is a legal aid clinic which represents low-income clients in litigation and undertakes law reform in environmental law.

I have provided the committee with a detailed brief prepared by CELA on Bill 52. I have also attached an article titled The Balance Shifts: The Ontario Protection of Public Participation Act, Free Speech and Reputation Protection. The article was written by Mr. Peter Downard, one of the members of the Anti-SLAPP Advisory Panel, which was established to advise the

Attorney General on the content of anti-SLAPP legislation. Mr. Downard's article was written in the context of Bill 83, which was introduced in the previous session of the Legislature.

The test for dismissal in Bill 52 is identical to the one that is set out in Bill 83; therefore, Mr. Downard's analysis is highly relevant to this bill, and I would urge the committee members to read his paper.

CELA is of the view that Bill 52 strikes an appropriate balance between the need to safeguard the public against SLAPPs and the need to safeguard a person's reputation and other legitimate interests. The bill provides an effective legal framework for addressing the growing problem of SLAPPs in Ontario.

While we remain strongly supportive of the bill, we believe it could be improved by adopting a number of amendments, which I have set out in my brief.

The most significant amendment relates to the date of applicability of the bill. Section 137.5 specifies that the bill applies to proceedings commenced on or after the day that the bill received first reading. We recommend that this section be deleted. There is no valid rationale for the provision.

Our second amendment deals with directors' and officers' liability. Quebec's Code of Civil Procedure, which deals with SLAPPs, includes a provision which gives the court authority to require directors and officers of a corporation who took part in the decision to commence a SLAPP to personally pay damages. We recommend that a similar provision be adopted in Bill 52.

It is important to note that the decision to institute a SLAPP by an individual can be made not on his or her own behalf, but rather as an agent with the intent of serving broader interests. A corporate president, for example, can institute a SLAPP with the support and resources from the broader corporation to silence criticism. Therefore, the potential for liability for directors and officers can serve as an important factor in deterring corporations from commencing a SLAPP lawsuit.

Thirdly, CELA also recommends that the bill be amended to give the court authority to prohibit a party from instituting future legal proceedings except with the express authorization and subject to express conditions to be determined by a judge. This would address the problem where a corporation or an individual have demonstrated a pattern of initiating SLAPPs.

Again, we note that Quebec's Code of Civil Procedure includes such a provision.

Finally, we recommend an amendment in relation to the Statutory Powers Procedure Act. We note that Bill 52 requires that submissions in costs before a tribunal be made in writing. We support this provision. However, we also recommend that the bill include a provision which states that an unsuccessful applicant for costs should provide full indemnity to those against whom the cost order was sought. We note that the advisory panel made this recommendation, but it was not adopted in the bill.

In conclusion, I would reiterate that CELA remains very strongly supportive of the bill and urge that it be enacted into law. We believe that this bill is consistent with the measures taken in other jurisdictions, such as the United States, Australia and Quebec, to address the problem of SLAPPs.

Subject to any questions, those are my comments.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Nadarajah. We will begin with questions from the PC side. Mr. Fedeli: three minutes—Mr. Miller.

Mr. Norm Miller: Thank you for your presentation. Five minutes isn't a lot of time to be able to go into too much depth, but we do have your presentation that you've left with us, which is helpful as well.

You talked a bit about the test for dismissal, both in the former Bill 83, I believe it was, and Bill 52, now the current bill. Can you talk a bit about that? Is the test for dismissal adequate in this bill?

Ms. Ramani Nadarajah: I believe that the test for dismissal is the core of this bill. I realize that there have been other deputations that have been made before this committee that have expressed some concern about the test, in particular the submissions from the Advocates' Society. I've had the benefit of reading their handout, as well as their written and oral submissions.

In their oral submission, they have stated that the plaintiff has to demonstrate that the lawsuit is certain to succeed. That is a misstatement of the provision of the bill. Under the bill, the plaintiff does not have to demonstrate that the action is certain to succeed. The plaintiff only has to demonstrate that there are grounds to believe that the plaintiff claim has substantial merit, and the moving party has no valid defence.

The grounds-to-believe test is significantly lower than the standard of proof that normally applies in civil proceedings, which is the balance of probability. So we think that the test actually is quite appropriate in this context and that it provides an effective legal framework to dealing with the problem of SLAPPs.

Mr. Norm Miller: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller. I'll pass it to the NDP, Mr. Vanthof.

Mr. John Vanthof: Thank you very much for coming today. I would agree that the test for dismissal is the meat and potatoes of this bill. In lay terms, if a suit is started and it goes through this process, basically, in our view, it's a litmus test to see if this should proceed further. Is that—

Ms. Ramani Nadarajah: Yes. Basically, the test is a screening mechanism to weed out bogus claims. I think it

does strike an appropriate balance to ensure that a meritorious action framed in defamation would be allowed to proceed. I think the test, as it's worded, provides sufficient guidance to the court.

You have to remember that when the Anti-SLAPP Advisory Panel held hearings on this issue that this issue formed a significant chunk of the overall hearings. That test was devised after the anti-SLAPP panel, which was chaired by the former dean of the University of Toronto law school along with two of Canada's leading experts in defamation law—they held oral hearings, they got written submissions and made recommendations in relation to that test.

Bill 52 reflects the recommendations made by the advisory panel. We have had two former Supreme Court judges and two judges from the Ontario Court of Appeal who have endorsed the panel's recommendations. The Ontario Bar Association wrote to the Attorney General recommending that Bill 83 be passed and enacted into law, and that bill, as I said earlier, adopted essentially the same test that you have in Bill 52.

So I think it's fair to say that legal experts who have looked at this test think it provides an effective mechanism to deal with the problem of SLAPPs and there is support in the legal community for this bill.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Vanthof. To the government side, Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Thank you, Ms. Nadarajah, for your very succinct presentation. Last week, we heard from a number of different presenters about the idea of justice and access when it comes to this bill.

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I want to ask you, in your opinion, when the court balances the interests at stake between the parties, should it have to take into account the benefit of a plaintiff's access to justice rather than the benefit of the expression of public interest, as the bill now provides?

Ms. Ramani Nadarajah: I think you have to strike an appropriate balance between the right to public participation and the right of a plaintiff, who has a meritorious claim, to have access to justice to move that case forward. If you read the panel's report, they recognize that an effective anti-SLAPP legislation would really calibrate the test in a way that balances these two rights. I think they got it right here.

Ms. Indira Naidoo-Harris: Okay, thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris, and thanks to you, Ms. Nadarajah, for your presence and deputation on behalf of the Canadian Environmental Law Association.

NORTHEASTERN ONTARIO MUNICIPAL ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenters to please come forward, representing the

Northeastern Ontario Municipal Association: Steve Black, Michael Doody and Roger Sigouin.

Welcome, gentlemen. Thank you. As you've seen, the protocol is five minutes, intro remarks; three minutes, rotation. Please do identify yourselves, as it's part of the permanent record, and Hansard would be most appreciative.

Mr. Michael Doody: My name is Michael Doody. I'm a councillor with the city of Timmins and president of the Northeastern Ontario Municipal Association. With me today are Mayor Steve Black of Timmins; Roger Sigouin, mayor of Hearst; Michel Brière, mayor of Mattice, and Mayor Peter Politis of Cochrane.

To begin with, let me say that I'm not going to be talking on any of the technical aspects of the bill. I'd like to talk about the possibilities of how it will affect communities from Moosonee—making your way down, to give you a broad overlook—to possibly Hearst, Mattice, Kapuskasing, Smooth Rock Falls, Iroquois Falls, Cochrane, Black River-Matheson, Timmins, Kirkland Lake and Temiskaming Shores. These are all communities that, over a hundred years ago, became involved in harvesting properly—and continue today—the natural resources of our community.

The possibility of this bill could drastically affect the lives, the economic viability of these communities and of families who, especially in the communities that I have mentioned, are in the forest industry. Over a hundred years ago, they came to settle northern Ontario, which is 75% to 80% of the land mass of the province of Ontario.

In forestry, if you have job, it's not like punching a time clock in Oshawa or Barrie. For many of the workers, they're going to work at 4:30, 5 o'clock in the morning, through all types of weather, in 45, 50 below. They have developed a culture and a way of living over the past hundred years that they want to continue to do.

Unless you live there—and let me say that I come from a family in northwestern Quebec, in Val-d'Or, Quebec, where it's both forestry and mining. My dad was a prospector. During the first 10 years of their married life, my father and mother built their log cabin and staked claims. That's how the north was built, and it has worked its way now to where we take pride in the way that we harvest the natural resources that the Maker put there for us.

In the last few years, people have learnt, and we're very fortunate that we work side by side, shoulder to shoulder with the First Nations people. We not only work together; we have learnt from each other. We know how valuable it is to reclaim the natural resources the way they should be, and we think we're doing that now.

Let me close by just making a short little statement, and then people here who are with me today are certainly open to answer any questions. For many years, people looked at northerners, pointed at them and said, "Northerners are the hewers of wood and the drawers of water." You're damned right. We do it better than anybody else in the world. We would like to continue doing that. Our children would like to continue doing that and their children. We, together along with the First Nations people—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Michael Doody: —we're only too glad to be able to do it and for people to say, no matter where you come from, "They're doing it the right way."

We're proud of the way that we do it. When you say that you're a lumberjack or a prospector, you say it with pride. When you take a look at the vast land mass of northern Ontario, our parents and their parents took the gamble to go up there and say, "We're going to make our life here," and we're going to continue doing it there. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Councillor Doody. We now pass the floor to the NDP. Mr. Vanthof, you have three minutes.

Mr. John Vanthof: Chair Doody and members of NEOMA, thank you very much for coming and for expressing your passion for the north, which I share. By coming here, you obviously feel threatened by aspects of this bill. If you could explain or develop a little the particular aspect of this bill that you feel is the biggest threat to your communities.

Mr. Michael Doody: Roger?

The Chair (Mr. Shafiq Qaadri): Just introduce yourself, please.

Mr. Roger Sigouin: My name is Roger Sigouin,

mayor of the town of Hearst.

How it's going to affect? Well, it's not really hard to answer. It's going to affect our community. It's going to kill our communities if we start going through these regulations and changing regulation. I mean, we're there for the right reason. I think if we want to talk about the environment, we're the best ones to talk about the environment.

Like Mr. Doody just said, we want to have a better environment for our kids, our youth, to make sure they're going to be able to make a good living in the future. It's not our intention to destroy the forest. The forest is a garden. With this bill, anybody could say what they want to say just to give us a hard time in the north, and those people don't even want to come and live in the north. They've never been to the north.

I think if that bill stays on it's going to hurt, because everyone is going to be able to say whatever they want to say whenever they want. That's not the truth. I challenge anyone who wants to come to the north—I'd make them visit what we've got. Forestry is our garden and we preserve our forests.

I'm really scared of this bill going through because of that. We're there for our own community and we're

going to fight for our own community.

Mr. John Vanthof: I would just like to put on the record that I think this issue—it's unfortunate that we have so little time to discuss this because this is a vital, important issue to the people of northern Ontario. It's obvious that there is some misunderstanding of the bill as well, and it's very unfortunate that we are only allowed this much time to speak to it. Thank you, Chair.

Le Président (M. Shafiq Qaadri): Merci, monsieur Vanthof et monsieur Sigouin. Maintenant je passe la parole à M. Potts au gouvernement. Trois minutes.

Mr. Arthur Potts: Gentlemen, thank you very much for coming down here. Thank you again for the passion with which you support the north. I'm the parliamentary assistant for the Minister of Rural Affairs and we take rural economies and rural economic development very, very seriously. We had a group with the Ontario Forestry Association yesterday and we heard very clearly how important the forestry industry is to us.

But what we're discussing here is the importance of also protecting people's individual rights against frivolous actions. Now, you're political people. If you had constituents who were angry at you about something you were trying to do and you responded by putting a slanderous lawsuit against them that had no merit, wouldn't you want them to be protected?

wouldn't you want them to be protected?

0920

Mr. Roger Sigouin: Sure, we want them to be protected. We have to look at it both ways. We've got the First Nations; they've been living there for a long time—forever—in the north. I think they do their own job, and doing a pretty good job as well. I think everyone did mistakes in the past because we didn't know any better. But those things change, and we did change a lot.

First Nations are on board with northern communities, and we're talking, communicating. Yes, we still have to improve, but I think the first thing is to protect our people and protect our industry. It doesn't matter if you're First Nation or non-First Nation; we're all equal. It's about having a good economy in the north and respecting our economy, and a bill like this could hurt our economy.

Mr. Arthur Potts: Now, we heard very clearly—I think you were in the room when the previous speaker talked about the test to move forward, if there's merit. If people are speaking untruths, if people are saying things which are lies, I think we heard very clearly that the suits will proceed. But if it's frivolous and it's just designed to shut people up, then there's a mechanism to stop it before people's houses and such were on the line. We've had 60 municipalities in Ontario come forward. As the president of the Northeastern Ontario Municipal Association, don't you think that municipalities also want to protect people against frivolous, non-meritorious lawsuits?

Mr. Michael Doody: I don't think anybody can argue with that. But, certainly, you begin to wonder, when you go to work every day and you've tried to build up a business, whether it's at the municipal level, or like Chief Klyne, that somebody from out there—out there—who doesn't work here, doesn't know the industry and decides to make a claim against those people who are trying to make a living—you begin to wonder.

I didn't come here to get into a snowball fight with somebody that's way out there, but you begin to wonder if your efforts are going unheeded. No one's going to argue with you on the claim that if somebody makes a claim that is—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts. Just before I offer the floor to the PC side and Mr. Fedeli, I would just like to announce and acknowledge, on behalf of the committee, the presence of the

delegation from Fiji. Welcome, gentlemen. I'm pleased to tell you I have been to Fiji. I had some of the most beautiful scuba diving in the world, and I would certainly encourage you to invite the justice policy committee to Fiji for a fact-finding tour.

With that, Mr. Fedeli, I offer you the floor.

Mr. Victor Fedeli: Thank you very much, Chair. I was very pleased to hear Mr. Potts tell us that he's supportive of the forestry sector. We'll see next week, and the week after, whether the forestry sector amendments that are coming forward will be voted on favourably by the Liberal Party. That will tell us whether these were words or actions today. So I'm very encouraged by that today.

I want to ask a question of Chief Klyne. Welcome. I'm very pleased to have you here today. I want to ask about some of the deputations we have heard. There are well-funded activist groups that are suggesting people use slander and misinformation such as "write a false product review" which threatens northern Ontario businesses. They seem to infer, Chief, that the aboriginal community supports them, and this bill is necessary to protect them. Could you give your comments on that, please?

Chief Earl Klyne: Yes, but first I must introduce myself. My name is Ashawaanaquet, Migissi Dodem, Ogama Chiimaaganing. Chief Earl Klyne, Eagle clan,

Seine River First Nation.

The Chair (Mr. Shafiq Qaadri): Chief, would you mind just aiming yourself at the microphone a little bit more, and repeat what you said?

Chief Earl Klyne: Okay. My name is Ashawaanaquet, Migissi Dodem, Ogama Chiimaaganing. Earl Klyne, Eagle clan, chief of Seine River First Nation, Treaty 3 area.

Where I come from, in all business aspects, is that we have a nation-to-nation agreement with Canada, and Ontario has a responsibility in there too. So we deal on a three-government agreement. NGOs do not deal with us; they do not speak for us; they do not tell us what we can do on our lands—never.

This bill here, Bill 52, has not been done properly. This is the first I've known about it. You have not consulted with us. This bill, if passed, will not be honoured by the First Nations. I guarantee it, because I will lead that charge to make sure it doesn't happen. The NGOs have affected our forest industry. As we try to get out of a welfare state—people say First Nations suck up too much money—these NGOs are telling us we can't do things on our own lands, we can't use our resources. Our treaties state 50-50—we share with government responsibility for those. NGOs are not included in that.

Mr. Victor Fedeli: So do you say they don't speak for you, Chief?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fideli. I do need to pass the time now to Mr. Vanthof. Three minutes, sir.

Mr. Arthur Potts: The NDP gets another three minutes?

The Chair (Mr. Shafiq Qaadri): I'm sorry. Thank you.

Mr. John Vanthof: I'll gladly take it.

The Chair (Mr. Shafiq Qaadri): Gentlemen, thank you very much for your presence. Thank you for your deputation on behalf of the Northeastern Ontario Municipal Association.

MS. MARIA CHMURA

The Chair (Mr. Shafiq Qaadri): I'd now like to invite our next presenter, Maria Chmura, to please come forward. Welcome. Please introduce yourself. You've seen the protocol. Please begin.

Ms. Maria Chmura: I'm Maria Chmura. I'm the daughter of Elizabeth Osidacz, and I'm speaking on her

behalf.

Thank you for the opportunity to speak to your committee about my SLAPP. Had I not been frozen with grief and intimidated by the prospect of even more litigation, I might have spoken out. Now I must live with the knowledge that my fear to speak out freely years ago set the stage for Officer Adam Hill to kill teenager Evan Jones on August 25, 2010. The SIU cleared Adam Hill of killing both my son in 2006 and Jones in 2010. However, the circumstances surrounding Adam Hill's use of force are now subject to investigation, re-opened in January 2015.

On August 29, 2006, the government allowed a one-sided, lewd and despicable presentation that was a slanderous attack naming me and my family. This was not a five-minute presentation like mine today, but rather a two-hour deputation to the committee on Bill 89, Kevin and Jared's Law. Members neither questioned the testimony, nor did they offer us an opportunity to respond to the misinformation about witchcraft, incest and bestiality. Instead, the government of Ontario still broadcast this filth in Hansard for the whole World Wide Web to see.

The government also followed MPP Cam Jackson's demand, recorded in Hansard, on September 1, 2006, that a government fund must support the plaintiffs in both their civil and criminal litigation against us. Court documents show that such a fund remained active in 2013. In 2015, we made a request under freedom of information for further disclosure on the Attorney General's fund. That request was denied.

I support Bill 52; however, I want it to be retroactive. I also want there to be consideration for damage and costs awards, assessable against third parties who maintain SLAPPs through a sympathetic plaintiff. This law must apply to the SLAPP still pending against me now for 14 years. In defending this SLAPP, I was billed more than \$150,000 in legal fees.

A horrendous event occurred on April 22, 2002. My son's wife charged my son with assault and began ugly divorce proceedings. My son had recorded a powerful, eye-opening video of what actually happened that night. I attach a DVD to my written submission with a copy of this video and the filthy Hansard transcripts describing that same time frame. Despite the recording, his wife and her family continued to harass my son to the breaking

point. Andy is dead now, but the animosity has fuelled a never-ending SLAPP against me and my family.

On March 18, 2006, my desperate son, seeing no end in sight, snapped. That's when my eight-year-old grandson, Jared Osidacz, was killed. Also, that same evening, Brantford police officers Adam Hill and Jordan Schmutz shot my son. I watched with my two grandchildren. There was no hostage. There was no warning.

Our family was still in shock and grieving on May 16, 2006, when she filed the first of multi-million dollar legal claims, including wrongful death claims against me personally. If I survive this ordeal, next May, I will be 80 years old and the SLAPP will be 14 years. All of my retirement years have been spent in and out of courts. I'm pleading for your help.

I ask your committee to make this Bill 52 clearly applicable in my SLAPP case. Please reinstate the retroactive clause removed last December. Also, consider removing the veil of third parties who fund and encourage SLAPPs. This is not just a matter of money and stress. In my case, SLAPP means life and death.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Chmura. We'll begin with the government side: To Ms. Martins, please.

Mrs. Cristina Martins: Thank you for your deputation this morning. The government has no questions at this point.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Martins. To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much for being here and for your deputation. We're very sorry for the loss of the life, but we have no questions further at this time.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli, Mr. Vanthof.

Mr. John Vanthof: I'd like to thank you as well. It's obvious that your lives have been deeply affected by the tragedies in your life.

The only question I have is: Do you believe that the retroactivity in this bill would make a big difference? It's not a common policy to make bills retroactive. It's hard to develop a bill to make the rules going back in time, but do you think that it would be worthy in your case?

Ms. Maria Chmura: I believe that, because the bill in its essence is about time frames, not to allow older cases before the court that privilege of this bill I think just defeats the essence of the bill.

Mr. John Vanthof: Okay, thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Vanthof, and thanks to you, Ms. Chmura, and to your mother for your presence and your deputation, as well as the written materials that you've given us.

ECOJUSTICE CANADA

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to please come forward: Mr. Pierre Sadik

of Ecojustice Canada. Welcome. You've seen the protocol.

Mr. Pierre Sadik: I have indeed.

The Chair (Mr. Shafiq Qaadri): Please begin.

Mr. Pierre Sadik: Thank you. My name is Pierre Sadik. I'm a lawyer with Ecojustice Canada. I want to thank the committee for having me here today. Ecojustice Canada has been involved in the ongoing effort to introduce SLAPP legislation in Ontario for several years. We have presented to the Moran expert panel, we publicly released a research report that describes anti-SLAPP legislation in other jurisdictions and in the US, and we've actively engaged with members of this Legislature to call for legislation such as Bill 52.

We believe that Bill 52, while not perfect, strikes a balance between freedom of expression in the public interest and the right to protect one's reputation and economic interests. Now, given the very tight timelines that we're all under here, I'm going to move fairly quickly, perhaps somewhat inelegantly, between the various issues I'd like to address before the committee.

The first issue is the question of the term "valid defence." Some have said that the term "valid defence" is too onerous for the SLAPP plaintiff to meet. First of all, this is the specific wording that the Moran panel, after careful consideration in hearing from stakeholders of all stripes, recommended in the report to the Attorney General, a report that was endorsed by four very senior judges, including Mr. Roy McMurtry.

Second, the alternative that has been proposed, "bad faith," imports a subjective state of mind. Legally, "bad faith" means motivated by ill will. This is a very high evidentiary standard for a SLAPP victim to meet. Moreover, most SLAPPs are brought by corporations and there are additional evidentiary complexities around establishing ill will in the mind of a corporate entity.

The concern raised with the term "valid defence" is, I think, that with probably any activity you can probably find a lawyer who will come up with a defence for you. Bill 52 uses the term "valid defence," not merely "a defence." As with all legislation in this province, the parties will be able to rely on the expertise of the judiciary to make a determination of what actually constitutes a valid defence in the context of the specific case before the judge.

The second issue relates to a question of two-tiered access to justice. Some have argued that the protection from SLAPP suits afforded by the bill should only be available to those individuals and organizations with an annual revenue of under \$100,000. This would, in my view, make Bill 52 a two-tiered piece of legislation in an area that I have not seen before in Ontario, or actually anywhere else in Canada.

I have seen legislation that involves financial benefit entitlement, where the entitlement is means-tested—something like the Ontario energy and property tax rebate—but I have never seen legislation that introduces a two-tiered system for access to what is, in essence, the basic right to use all of the procedural tools of the justice

system, and it's a slippery slope. What is the basis for the \$100,000 figure? This committee has heard from several SLAPP victims that the legal costs associated with defending themselves can easily run into tens of thousands of dollars per month, or even over \$100,000 in the context of the entire suit.

Mr. Johnson, the SLAPP victim that the committee heard from last week, pegged his lawyer's fees at \$100,000. Is it fair to expect someone who earns \$100,000, \$120,000 or even \$150,000 and whose after-tax income is substantially lower to borrow against their home to fight a SLAPP suit through to the end?

My final issue relates to the question of the so-called retroactivity of the bill. The rationale for limiting the application of Bill 52 to proceedings commenced on or after the day the bill received first reading, which is December 1, 2014, is not apparent. Many victims, some of whom the committee has already heard from, are left out in the cold by this peculiar provision.

In most instances, sound legal principles regarding new legislation specify that the law cannot retroactively change, as you were suggesting, Mr. Vanthof—that legal consequences of actions that were committed before the enactment of the law—in other words, the Legislature should not reach back in time to try to alter the past. But a SLAPP is an on-going act. The SLAPP suits that this committee heard about last week, while they had been launched before December 1, are ongoing lawsuits that continue to impact their victims.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Sadik. I'll pass it to the PC side, to Mr. Miller.

Mr. Norm Miller: Thank you for your presentation. In the short time that I have available, I'd like to talk a bit about the threshold that you mentioned. We've had groups come before us, particularly from northern communities. I believe it's the Federation of Northern Ontario Municipalities that have asked for an amendment so that this bill just applies to the little guy, I guess is the way that I would describe it. We also heard from the Ontario Forest Industries Association. They bring up the example of Greenpeace, a well-funded organization that is counselling people to write untrue product reviews on Best Buy to hurt Resolute Forest Products. So it seems to me that if it's going to just apply to the small guy, this threshold does make some sense.

Can you talk a bit about why—it sounds like you're opposed to the threshold—you don't think that makes sense?

Mr. Pierre Sadik: The threshold, as I said, makes this a two-tiered piece of legislation in connection with access to the justice system. I haven't seen any other two-tiered legislation in this province or in Canada that doesn't deal with benefit entitlements. So there's two-tiered legislation for entitlement to welfare, unemployment income, GST rebate, property tax rebates. I have not seen two-tiered legislation around substantive rights, such as access to the justice system.

The second thing, as I said, is where does the \$100,000 figure come from? If someone is earning even

\$120,000, your after-tax income right now is probably in the neighbourhood of \$55,000, \$60,000 or \$70,000. A \$100,000 SLAPP suit will still sink you.

If you're a \$200,000, a \$300,000, even a \$500,000 organization—let's say a wildlife conservation organization or an anti-tobacco organization—a \$100,000 SLAPP suit would mean that this organization would have to lay off staff, perhaps close in its effort to try and defend itself against the SLAPP suit.

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Most SLAPP suits are brought by corporations with multi-million dollar revenues because it takes that kind of revenue to have an extra \$100,000 or \$150,000 to lawyer up and go after the defendant.

The \$100,000 figure is an arbitrary figure. It's a slippery slope, and it makes the first example that I have seen of two-tiered legislation, other than financial benefit

entitlement legislation, in this province.

Mr. Norm Miller: Thank you. **The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Miller. To the NDP side. Mr. Vanthof.

Mr. John Vanthof: I'd like to continue on the issue of thresholds because, as a former victim of a SLAPP suit and a little guy who had a dairy farm with an overall income of more than \$100,000, basically, the \$100,000 threshold excludes every small business person in the province from protection from this.

In northern Ontario, and I think other places, a lot of people do feel threatened by very organized and, in many cases, not-understanding environmental groups. They're looking-I don't want to speak for them-for some kind of way to differentiate. Would you have any suggestions

on how to do that?

happened to northern Ontario.

Mr. Pierre Sadik: I have no suggestion for how to do that. I listened in on last week's debate, as well. It was very informative, and at times heartbreaking, from both sides, the folks in the north and the folks who have been victims of SLAPP, like yourself. What I'm hearing is a disconnect somewhere. I'm hearing this piece of legislation being described as the worst thing that ever

This legislation is not in place. We have had, let's say, three decades of environmentalists in the north and northern resource extraction activity. I have not heard of a single defamation suit brought by the resource sector in the north that has gone through successfully to the end. This was before this bill was in place, so there would have been nothing like this bill to test pre-existing defamation suits. I don't think that this bill is the bugbear that it's made out to be.

I think that there are other issues at play, in terms of the north and the environmental community and others, but I don't think that this is at the root of it. I think other issues, like legislation that was passed in this province and that is being disputed in the courts, may lie at the heart of some of the problems, but I don't think that this is what it's being made out to be. I see a disconnect here. This legislation is a flashpoint, but it's actually a misunderstanding of what this legislation is about, in my respectable opinion.

Mr. John Vanthof: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Vanthof. To the government side. Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Mr. Sadik, thank you so much for your comments. I'd like to get your thoughts on one of the key features of Bill 52. You didn't touch on this, but I do want to talk to you about the 60-day fasttrack review process.

Under Bill 52, as you probably know, the defendant can bring a motion before a judge to dismiss the lawsuit. From the date that the defendant files the motion to dismiss, the court has 60 days to hear the defendant's motion. There is no legislated deadline for when the court must render a decision. Do you think that this is an adequate resolution to solving lengthy, expensive, meritless lawsuits?

Mr. Pierre Sadik: What do you mean? Do I think 60 days is enough time or too little time? I'm not sure.

Ms. Indira Naidoo-Harris: I just want to get your thoughts on it. Essentially, there's a 60-day period where a judge has a chance to start looking at things. He doesn't have to render a decision during that time. We've heard from several presenters over the last little while about this issue of 60 days, and I'd just like to get your input on whether or not you feel that this is an adequate process.

Mr. Pierre Sadik: Sure. I think that the 60 days is mildly ambitious but probably appropriate in the context of what this legislation is trying to do. This legislation is trying to get unmeritorious lawsuits out of our overclogged judicial system. You can't do that fast enough, so the 60-day timeline—I heard Mr. Klippenstein also commenting on that—is doable. It's been done in the context of some other judicial proceedings. He mused about 90 days; I'd like to see us try to do it in 60 days at

In terms of when the judge has to render her or his decision, it's always difficult to compel our overburdened judiciary to write decisions within a set timeline. Judges are the most aware of the backlog in our judicial system. I think that enlightened self-interest would encourage them to write decisions to get unmeritorious lawsuits out of the system as quickly as possible, and to allow those that are with merit and that have met the careful balancing test in Bill 52 to proceed.

Ms. Indira Naidoo-Harris: So you feel it strikes the right balance.

Mr. Pierre Sadik: I think 60 days strikes the right balance, and the discretion that judges have to render their decision in a timely manner is appropriate as well.

Ms. Indira Naidoo-Harris: Chair, I don't know how much time—I guess I don't have any more time.

The Chair (Mr. Shafiq Qaadri): Thirty-nine seconds.

Ms. Indira Naidoo-Harris: Retroactive: Just quickly clarify your thoughts on that.

Mr. Pierre Sadik: Sure. It makes no sense to try to change an act that occurred in the past. It's a legislative principle and it's not permitted by the Canadian Charter of Rights and Freedoms. You can't change the nature of something that someone already did in the past via legislation.

But a SLAPP has a beginning, a period during which it runs and an end; usually it's a settlement after the SLAPP defendant has knuckled under. If a SLAPP is still ongoing, there's actually nothing wrong with allowing folks to bring the tools of the judicial system—

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Sadik, for your deputation on behalf of Ecojustice Canada.

ONTARIO CONFEDERATION OF UNIVERSITY FACULTY ASSOCIATIONS CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenters to please come forward, Mark Rosenfeld of the Ontario Confederation of University Faculty Associations and Sylvain Schetagne, the Canadian Association of University Teachers. Welcome, gentlemen. Protocol: five minutes' intro and three-minute rotations of questions, precisely timed, as you can see.

You may please begin.

Mr. Sylvain Schetagne: We would like thank the Chair and members of the Standing Committee on Justice Policy—

Le Président (M. Shafiq Qaadri): S'il vous plaît, mon ami, introduisez—

Mr. Sylvain Schetagne: I was going to in my speaking notes. Thank you. Yes, I will.

I want to thank you for giving us the opportunity to share our perspective on Bill 52. I am Sylvain Schetagne, the associate executive director with the Canadian Association of University Teachers. With me is Mark Rosenfeld, the executive director of the Ontario Confederation of University Faculty Associations. Collectively, we represent academic staff associations across Canada, comprising approximately 68,000 members, including faculty and academic librarians in Ontario.

I want to take a few moments to elaborate on the importance of Bill 52 to OCUFA and CAUT and our members. Mark will speak about how the legislation might be improved to achieve its objectives.

As part of their role as academics, our members are called upon to speak up about issues of concern to residents of Ontario and Canada. Their responsibility extends beyond the boundaries of a university campus. Academic staff members have a long history of contributing meaningfully to public dialogue about important public issues, which is encouraged and protected by academic freedom, a right unique to academic staff. We're not alone in calling for protections of the rights of academics to speak out. Canadian courts at all levels, international conventions and agreements recognize the importance of the academic voice as an essential participant in democracy.

Unfortunately, there is a long history in Canada of academics being targeted by litigation to silence them. We have provided you with a couple of examples in our written submission, but there are many, many more. We support Bill 52 not just because it protects our members, the academic staff at universities in Ontario, but because it protects democracy.

Bill 52 enables a defendant to seek prompt dismissal of a proceeding against him or her. Without it, the threat of a litigation proceeding may silence opposition, even when the proceeding or threatened proceeding is not credible. It is impossible to quantify the chilling effect of such self-censorship, but research indicates that of the cases that are actually launched and which actually proceed to trial, the plaintiff fails to win their case between 77% and 82% of the time. All of this suggests the need for legislation like Bill 52 is real and urgent. CAUT and OCUFA therefore want to commend the government in moving forward to pass Bill 52.

Mr. Mark Rosenfeld: Both OCUFA and CAUT believe that Bill 52 does enhance democracy and ensures protections for voices of dissent, but we want members of the committee to consider incorporating four changes to the legislation that would enable the bill to more effectively achieve its objectives. I'll go through those. 0950

First, we're concerned that the award of costs or damages are not made until the court has heard and decided the defendant's motion for dismissal of a proceeding. Practically speaking, this means the defendants will not know with certainty whether they will recover their costs until after the court has decided. This may prevent some defendants, we know, from using the procedural motions and measures in Bill 52 to have the proceedings against them dismissed. We believe that the bill can and should do more to redress the financial inequality between the plaintiffs and defendants, including providing options for up front financial assistance, which we can elaborate on if you want to know.

Secondly, the purpose section of the bill, subsection 137.1(2), defines "expression" to include both verbal and non-verbal communication. However we believe the intention of the bill should be made clear and explicit. Expression should expressly be defined to include communication and conduct. Express language, we know, reduces uncertainty, which is particularly important where legislation protects fundamental democratic rights.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Mark Rosenfeld: Pardon?

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Mark Rosenfeld: Clarity does provide better protection.

Thirdly, the bill doesn't define an express statutory right to public participation; we believe it should. By including the express right to public participation, the law acknowledges its value importance.

Fourthly—and I realize time's moving on—we believe that there should be an addition of a clause that expressly contemplates personal damages awards against senior officers, which would have the effect of resulting in more careful review of decisions to commence legislation—

Le Président (M. Shafiq Qaadri): Merci beaucoup pour vos remarques introductoires. Maintenant je passe la parole à M. Vanthof du NPD. Trois minutes.

Mr. John Vanthof: Thank you for taking the time to come here. We would agree that freedom of expression in academia is very important. There is similar legislation that is being discussed here in other jurisdictions. In your experience talking with your peers in other places, does it have the desired effect?

Mr. Sylvain Schetagne: It does exist in Quebec. As you know, it has been in place in BC as well. Unfortunately, I do not have any examples of people in academia that have used those procedures in Quebec and in BC at this stage. The fact that it is in place in Quebec probably helps and we think it does help academics in Quebec to express their views on debates of a public nature. We hope that the government will do the same thing in Ontario.

Mr. John Vanthof: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Vanthof. To the government side: Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Thank you very much for your deputation this morning. I just wanted to ask a question here. There's some concern that by having this legislation apply only to certain groups with a smaller financial backing, it would restrict free speech. What are your thoughts on this? Like, groups that would be—smaller groups and larger groups.

Mr. Sylvain Schetagne: Well, how do you define a group? "University professor" is not a group. If you limit the scope of this legislation to groups only, then it doesn't cover any of our members. That's a big problem. Limiting the scope of this legislation actually defeats the objective of this legislation. It should be applied as broadly as possible.

Mr. Lorenzo Berardinetti: Thank you. I have a second question. This committee has been hearing deputations talking about the issue of retroactivity of the bill. There are some cases already going through the process of being—through SLAPP litigation. If it's applied retroactively, how far back do you think it should go in terms of retroactivity? What are your thoughts on that?

Mr. Mark Rosenfeld: We believe that it would go back to cases that are already in progress. That's where retroactivity should extend to. So obviously the cases that are currently happening and then, obviously, cases going forward—they should be able to avail themselves of the provisions of Bill 52.

Mr. Lorenzo Berardinetti: So anyone that has a case or is involved in this kind of litigation would be able to apply for trying to retroactively bring forward this new legislation, if and when it gets passed?

Mr. Mark Rosenfeld: We would agree with that.

Mr. Lorenzo Berardinetti: Without a time—like, going back several years?

Mr. Mark Rosenfeld: We believe that there should be retroactivity. So, consequently, in terms of how far that goes back, we do believe that they should avail themselves in provisions of fast-tracking.

Mr. Lorenzo Berardinetti: Thank you.

Mr. Mark Rosenfeld: Given also in light of the fact that, as was mentioned, the majority of those cases are dismissed.

Mr. Lorenzo Berardinetti: Yes. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Berardinetti. To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much. Welcome. On page 1 of your deputation, you say that OCUFA and the confederation "have long supported policies which provide robust protection to those who participate in public discourse." You go on to say that the confederation was one of the groups—including Greenpeace, it says here—"which formally urged the Ontario government" to pass this, "in order to protect public debate in Ontario." So you're in some pretty interesting company that you quote here.

One of the presenters last week said that this bill gives professional environmental groups the right to defame. We also heard and received the evidence of emails from Greenpeace Canada's volunteer program, which I'm going to read: "Here are five cyber-activist tasks this month," and they go on through the five things that they want people to do online. Number 4 is, "Write a false product review on Best Buy's website. Be creative and make sure to weave in the campaign issues!"

The campaign, of course, was to try to make Best Buy stop buying paper products from Resolute Forest Products in northern Ontario. It was a very successful cyber-activist approach, because now in northern Ontario, in Iroquois Falls, Resolute has closed the mill. Families are out of work; there's very little work left in the entire town of Iroquois Falls. When our committees travelled through northern Ontario on the pre-budget consultations last January, we were there the week that Resolute Forest Products shut down the mill in Fort Frances and put a thousand people out of work that day.

Is this the protection of the public debate in Ontario: the offer, the suggestion, the command to write a false product review? Is that part of what you think is the action that should be taken?

The Chair (Mr. Shafiq Qaadri): Thirty seconds, Mr. Fedeli.

Mr. Sylvain Schetagne: It is clear that as academics they actually have a role to play in our society and public discourse and defending the public interest. There are different ways that that right has been protected, academic freedom being one; under the charter as well as internationally, it is recognized as a right.

Unfortunately, it doesn't protect them against corporations, for instance, that have, through their capacity—"I can use the tribunals to attack them, to silence them." We think this bill is actually putting together the right balance in order to protect the right of freedom of expression, as well as academic freedom for our members—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli, et merci beaucoup, Monsieur Schetagne—to you

as well, Mr. Rosenfeld—on your deputation on behalf of the Canadian Association of University Teachers and the Ontario Confederation of University Faculty Associations.

The committee is now in recess till 2 p.m. in this room.

The committee recessed from 0958 to 1400.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, I reconvene the justice policy committee. As you know, we're here to consider Bill 52, An Act to amend the Courts of Justice Act, the Libel and Slander Act and the Statutory Powers Procedure Act in order to protect expression on matters of public interest.

MR. BILL FRENCH

The Chair (Mr. Shafiq Qaadri): I invite our first presenter to please come forward: Mr. Bill French, mayor of the township of Springwater. Welcome, Mr. Mayor. You have five minutes for an introductory address, and then rotation by parties for three minutes each. I will be enforcing that vigorously, as you know. I invite you, please, to begin now.

Mr. Bill French: Thank you, Mr. Chair, and committee members. As mentioned, my name is Bill French. I address the committee today not in my position as mayor of Springwater township and not on behalf of our council. My deputation is presented to provide a municipal elected official's perspective on strategic lawsuits against public participation, commonly known as SLAPP suits.

My perspective has been the result of observing what I feel has been a misuse of the judicial system by deeppocket proponents to have their way, regardless of the many good policies put forward by the government. I've made these observations by following local councils for over six years prior to my election as mayor; sitting on local boards and committees; and participating in a variety of ministry-led hearings and amendments of the provincial policy statement and Places to Grow, all intended to create a better Ontario under the guidance of the Ministry of Municipal Affairs and Housing and the Ministry of Infrastructure.

The easiest way to dissuade an opponent is to empty their pockets with clever legal manoeuvring that could cost an individual, a ratepayers group or a small municipality much more than they are able or prepared to pay. I have witnessed the pressure of deep-pocket parties on individuals, ratepayers groups and small municipalities. Through fear of lawsuits, they sit quietly as the lobbying by proponents at higher levels of government set aside good policies and legislation to make square pegs fit in round holes.

I would ask that the proposed legislation include a clear definition of what is a legitimate claim, and expand the legislation beyond the protection of individuals or ratepayers groups and include municipalities and their local politicians, along with other agencies such as conservation authorities and their members.

SLAPP suits, which has become an industry in itself, have reached far beyond the local ratepayer or ratepayers group and are now impacting those elected to govern. If an action is taken by an individual, a municipality or other agency in good faith and is in the interests of local residents, that action must be given protection in a very broad sense rather than a narrow definition. The legislation should protect them from the high-paid lawyer who will dissect and frustrate an issue, creating unnecessary and expensive litigation. Immunity must be provided to these groups and individuals, to even the playing field.

One of the effective ways a big-money interest can manipulate a local municipal council is by launching SLAPP suits against individual members of council, to a point where those council members must declare a conflict of interest because of potential litigation. This could effectively neutralize a majority of council that might be opposed to an initiative, and shift control of the council to a small minority in support of an unwanted initiative. This is an affront not only to our freedom of expression, but is a direct attack on democracy itself.

The ability to protect the voice of the general populace should not be decided by who has the most money and the best solicitor. It should be determined by providing the opportunity for anyone, including elected officials, to fairly state concerns or defend policies that impact their community.

I respectfully ask that this bill be supported and, ideally, strengthened. We need to ensure a voice is returned to the average citizen or elected official in the province. We must ensure those voices are not muzzled because of the fear of SLAPP suits.

I thank the committee for your time.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. French. The floor now goes to the government side, to Mr. Potts.

Mr. Arthur Potts: Thank you, Mr. French. Thank you for coming in and bringing your perspective from beautiful Nottawasaga territory.

Mr. Bill French: North of it.

Mr. Arthur Potts: Just a little north of it. I meant the river, not the town.

You bring up an interesting point here about elected officials, that if someone were to bring a lawsuit, let's say just before a strategic vote in a council, your sense is that would put you in a conflict. Do you want to expand on that? Has that happened in your experience?

Mr. Bill French: I'll just say that I'm on the border of that happening to me. I might have to declare conflicts in a number of things. My understanding is that has happened in other jurisdictions. I believe you might find a particular case in Caledon a few years ago where basically a number of councillors got sued and an unwanted initiative took place. There was still a quorum, because, as you know, if you declare a conflict, obviously your number is removed from that quorum count. That's one of the concerns.

Mr. Arthur Potts: That's very interesting, because the intent of the bill is to give quick relief against a

frivolous—but if you need relief in two or three days before a council, that would be difficult to do. So that's why you talk about this immunity concept.

Mr. Bill French: Yes. But there's no question. Shortening the period to launch it at least would take you out of that conflict where you couldn't drag it out for a couple of years. Quite honestly, you could sit on council for a four-year term and continually have to declare that one item because it hasn't gone through the courts.

Mr. Arthur Potts: Yes. I appreciate that your fundamental support, though, is that we have to protect against frivolous lawsuits.

Mr. Bill French: Yes.

Mr. Arthur Potts: We've seen other municipal bodies, particularly in the north, who are concerned about how this could devastate economic development. But do you think the tests here are sufficient that inappropriate action will be protected, that frivolous suits will be removed, but that if there is real defamation taking place—or lies and such—it would be covered?

Mr. Bill French: Yes. As a matter of fact, I certainly support legislation or laws that protect people from defamation and slander, but if it is frivolous and vexatious, which a lot of them are—but there's an even bigger problem than that. Sometimes they're launched, just dragged out, and then basically withdrawn. Quite honestly, the person on the lower end of the scale will not even have the money to go and seek remuneration for their costs.

Mr. Arthur Potts: I certainly appreciate this perspective. Thank you.

The Chair (Mr. Shafiq Qaadri): The floor now passes to Mr. Fedeli with the PC side.

Mr. Victor Fedeli: Welcome, Your Worship. It's always a pleasure to have fellow elected officials here.

You talked about this bill and others that should be in place to protect people from defamation, and there's no hesitation that we would completely agree with you on this point. We've had many deputations from associations who are concerned that this gives professional environmental groups the right to defame. One example that has come up frequently is the Best Buy approach that was taken by Greenpeace. I'm not sure if you're familiar with that one.

Mr. Bill French: No, I'm not.

Mr. Victor Fedeli: Greenpeace has sent out emails trying to stop a company, Resolute Forest Products—especially in northern Ontario—from selling products to the Best Buy chain. One of the emails that was sent by Greenpeace Canada is, "Write a false product review on Best Buy's website." This is what they called one of their five cyber-activist requests.

The concern, of course, from northern Ontario organizations—by the way, Best Buy did succumb to Greenpeace's cyberactivity, as they called it themselves, and stopped buying newspaper flyer material from Resolute, who then in turn shuttered their plant in Iroquois Falls, putting the entire community out of work. Shortly thereafter, they shuttered the plant in Fort

Frances and put a thousand men and women out of work. That's the context. The groups who have been here are worried about the professional environmental groups having the right to defame.

There are some amendments that would protect the little guy, so to speak, the family, the individual, the councillor, the mayor but not protect a company that has revenues of \$300 million a year, leaving them to fend for themselves.

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Would a motion or an amendment such as that, that protects the little guy but makes sure the NGOs aren't out there continuing to defame other Ontario companies, be something that you would see your way clear to?

Mr. Bill French: I think one of the issues that I have with that is that you have dual justice. I think there has to be legislation that is fair to everybody. The example that you use, if someone is blatantly telling lies about something, I don't think this legislation is going to help those people that obviously make false claims.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. The floor now passes to the NDP: Mr. Vanthof.

Mr. John Vanthof: Thank you. And thank you, Mayor French for coming. It sounds like you have some close personal experience with this type of thing. Could you elaborate? I think the problem that we're experiencing here is the difference between an attempt to stifle public participation and an actual slanderous—someone who, or an organization, actually does a slanderous act.

And the line is: Do you get a free pass, do you get kicked out of the system, or is it a worthy lawsuit? Could you expand on that?

Mr. Bill French: What's a worthy lawsuit? I mean, if it's obvious that there are false statements made about an individual or a company that cannot be substantiated, if someone maybe gets upset and calls someone a liar, I'm not sure that's a legitimate claim. If someone says, "He's a liar because he did all of these things" and there is no proof of those allegations, that would be slanderous and libellous in my estimation.

What happens is the individual is being sued because a guy gets frustrated and upset and says, "Well, so-and-so is a liar." Those ones, to me, are the ones that really have to be dealt with really quickly. Quite honestly, if you drag it out for six months or whatever, you can empty the guy's pocket.

I think there is a clear kind of delineation here and, quite honestly, I haven't seen that many from kind of—I've observed a number of ratepayer groups and that. They're seriously interested. They try and gather the facts and basically when they make comments and that, they make them basically I think out of good will. They're not out to assassinate the individual's reputation. I've never seen that, quite honestly. Maybe I'm living in a more sensible area, I'm not sure.

They're legitimate claims but because someone does get upset and calls someone a name—I'll give you an example. Our last council, and one of the reasons that they're gone, wanted to pass legislation. Because I wrote

a lot of articles, they wanted to sue me because I was critical of some of the decisions they were going to make. They were saying that I was calling them names and whatever. They tried to actually pass legislation in our municipality that the township would chase me for a while, cost me \$5,000 or \$6,000 for a lawyer, and go nowhere.

So we have to bring that type of situation in control.

Mr. John Vanthof: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Vanthof and thanks to you, Mayor French, for your deputation on behalf of the township of Springwater.

ABOVE GROUND

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Karen Hamilton of the Halifax Initiative. Welcome, Ms. Hamilton. You have seen the program, you have five minutes' intro now.

Ms. Karen Hamilton: Thank you. My name is Karen Hamilton. I'm program officer at Above Ground, an Ottawa-based non-profit, public interest organization. Until recently, the organization was called the Halifax Initiative.

The Halifax Initiative was threatened with a SLAPP suit earlier this year. Before describing the negative impacts this had on the organization, I'd like to first describe our work and how it contributes to informed public debate in Canada. The Halifax Initiative was founded more than 20 years ago. For over a decade, our work has included a focus on corporate accountability.

We encourage companies to respect human rights. Moreover, we encourage the Canadian government to fulfill its legal duty to protect against humans rights abuse by the private sector. Canadian multinational companies are linked to serious human rights abuse and environmental damage overseas. They face a range of credible allegations that include employing slave labour, mismanaging toxic waste and using intimidation tactics to silence opposition to their projects.

International authorities including the Inter-American Commission on Human Rights and several UN treaty bodies have examined the impacts of Canadian companies in foreign countries. Most recently, the UN Human Rights Committee expressed concern about human rights abuses by Canadian mining companies operating abroad and about the lack of accessible remedies for victims of these violations. Eight claims containing allegations of environmental or human rights abuse related to the overseas operations of Canadian mining companies have been filed by foreign plaintiffs in Canadian courts. Three of these cases are currently before Ontario courts. They include allegations of company personnel committing murder and rape and causing injury.

To be sure, Canadian companies are not the only perpetrators of corporate abuse. The UN has called for more robust accountability for all multinational companies, and the UN Human Rights Council is working to establish a legally binding treaty to this effect.

The Canadian government is an important partner to multinational companies. It actively facilitates their operations through a variety of mechanisms, including political support, economic support and the negotiation of commercial treaties. My organization disseminates information and analysis about government programming and raises awareness about the harmful impacts caused by some of the corporations that benefit. We seek to avoid these impacts by promoting greater transparency and accountability in government practice, and we develop policy reform proposals to this end. We build support for these proposals through public education and engagement with decision-makers.

Earlier this year, the Halifax Initiative and its staff were threatened with a SLAPP suit regarding a publication that we produced in collaboration with international colleagues. In late 2014, we published an online report that exposes serious human rights abuse associated with the operations of several multinational companies that receive public financing. The publication was extensively researched, and our claims were substantiated by diverse sources, including testimonials from people directly impacted by the companies' activities.

In January of this year, my colleague and I received a letter from a law firm representing one of the companies mentioned in the publication. Among other things, the five-page letter urged us to remove the publication, publish an unqualified retraction and apology, and cease and desist from publishing any other information about the company without first verifying that information with the company. We were informed that our failure to comply with the demands would result in possible civil and/or criminal proceedings, and the company estimated damages at approximately \$200 million.

Our organization took the letter very seriously. We immediately shared it with our international colleagues and initiated a process for deciding how to respond. We also hired a lawyer. Discussions with our international colleagues, our board members and our lawyer took a great deal of time and effectively paralyzed our organization for the next three weeks.

In the end, we felt compelled to withdraw the publication from public circulation. This was a very difficult decision. We felt a genuine obligation to bring information about the company's operations to light and did not want to be intimated by the company's threat. However, we are a small organization with limited resources, and we knew the organization would not survive the demands of litigation. Furthermore, if staff members were sued in their personal capacity, they would not have the financial resources necessary to mount an effective defence.

In discussions with the international colleagues with whom we co-authored the publication, it became clear that relative to other legal jurisdictions, public interest organizations—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Karen Hamilton: —and advocates are highly vulnerable to SLAPP suits in Ontario. Had legal protections existed in Ontario for public interest

communication, our analysis of the threat the letter posed would have been very different.

We therefore urge you to adopt Bill 52. The measures contained in the bill will allow organizations like ours to continue to contribute to the development of informed public policy. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Hamilton, for your precision-timed remarks. I offer the floor now to Mr. Fedeli of the PCs.

Mr. Victor Fedeli: Thank you very much, Ms. Hamilton, for your presentation—a well-crafted presentation, I might add, and as the Chair said, well-timed. You spoke passionately about corporate accountability, and so I want to put the shoe on the other foot for a moment and ask about NGO accountability, as well—whether they should both be held to an equal standard.

I have used an example a couple of times; I'm going to use it again. When one of the organizations—in this case, it happens to be Greenpeace Canada—wanted to effect a result in having another company, Resolute Forest Products, stop selling product to a company called Best Buy, they resorted, in their own email, to cyberactivist tasks and they gave five cyber-activist tasks to all of the Greenpeace Canada volunteers. The fourth one is, "Write a false product review on Best Buy's website. Be creative and make sure to weave in the campaign issues!" The campaign issues are about the forest.

But they've asked them to write a false review. As a result of that false campaign against this corporation, Best Buy did succumb to the cyberactivity proposed by Greenpeace and cancelled their contract for newsprint from Resolute Forest Products. As a result of that, Resolute shuttered their plant in Iroquois Falls. When all three parties were visiting Fort Frances last January as part of the pre-budget consultations, Resolute also shuttered their plant in Fort Frances, just before we were there, and put a thousand people out of work.

Earlier today, we heard from another group who said this bill, Bill 52—I'll use their words—isn't "the bugbear" you think it is. It's not bad for corporations.

I cite the Resolute/Best Buy/Greenpeace example, where we are bringing amendments—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. The floor now passes to Mr. Vanthof of the— *Interjections*.

The Chair (Mr. Shafiq Qaadri): Mr. Vanthof, your time begins now.

Mr. John Vanthof: Thank you very much for coming and for giving a very succinct presentation. I think I'm going to follow along Mr. Fedeli's line but, hopefully, I'll actually have a question.

Mr. Victor Fedeli: I would have liked to-

Mr. John Vanthof: Yes. I'm from northern Ontario, as well. I think the issue that a lot of people in northern Ontario are very concerned about is that NGOs aren't allowed, or aren't given the ability, to slander at will.

I would like your opinion on whether this legislation is meant to empower public participation, but does it—

should it—go far enough to allow slander? Because the Greenpeace case that we keep hearing about, in my opinion, is a case of slander. Greenpeace slandered Resolute. That should still be a case of slander and shouldn't be impacted by this legislation, because a case of slander should still go ahead. Would you have some comments?

Ms. Karen Hamilton: Yes. I'm not going to comment on Greenpeace in particular, but I do agree with what you say, that a case of slander, under this bill, would move forward.

The perspective of our NGO is that we're not interested in slandering organizations, with no basis. If there is a cause for concern, if we do have legitimate concerns that are substantiated, that is what we want to bring into the public light, not unfounded claims. It's not in our interest, as an organization to put that forward.

Mr. John Vanthof: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Vanthof. The floor now passes to the government side: Madame Martins.

Mrs. Cristina Martins: Thank you, Ms. Hamilton, for being here today. I'm going to go straight to my question, so that I get the question in, in the time that I'm allotted to ask.

As you know, this legislation is intended to protect companies and public participation advocacy groups from meritless lawsuits. Do you feel that legitimate lawsuits for slander would still be able to progress through the courts appropriately, with this piece of legislation?

Ms. Karen Hamilton: In the sense that slanderous lawsuits would not be dismissed?

Mrs. Cristina Martins: Yes.

Ms. Karen Hamilton: Yes. My understanding of the bill is that, yes, a slanderous lawsuit would continue; an unfounded claim would not be dismissed, according to the bill.

Mrs. Cristina Martins: Okay. Those are all the questions that I have.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Martins, and thanks to you, Ms. Hamilton, for your deputation on behalf of the Halifax Initiative.

FEDERATION OF NORTHERN ONTARIO MUNICIPALITIES

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Mr. Alan Spacek of the Federation of Northern Ontario Municipalities. Welcome, Mr. Spacek. You've seen the protocol. I invite you to please begin now—five minutes.

Mr. Alan Spacek: Thank you. Good afternoon. First, I'd like to start by thanking the committee for providing me with an opportunity to present the views of the Federation of Northern Ontario Municipalities, known as FONOM, with regard to Bill 52, the Protection of Public Participation Act.

Our organization is the unified voice of northeastern Ontario, representing and advocating on behalf of 110 cities, towns and municipalities. Our mission is to improve the economic and social quality of life for all northerners, and to ensure the future of our youth in a sustainable way. We also work closely with the Northwestern Ontario Municipal Association, known as NOMA, which represents 35 municipalities in northwestern Ontario. Collectively, we represent 145 municipalities, and we share a united voice with respect to the effects that Bill 52 will have on our region.

As northerners, we have deep concerns that Bill 52 will negatively impact our livelihoods if it moves forward as currently written. While we understand that the legislation arose out of a need in southern Ontario—well-intended legislation—my constituents in the north have not expressed a want or need for Bill 52. In fact, they're very concerned about the unintended consequences in the north. Regional impacts need to be taken into consideration to balance the legislation.

Since the anti-SLAPP legislation, as it's commonly referred to, was first introduced as Bill 83 in June 2013, FONOM has continued to reach out to the government, asking for northern concerns to be addressed. Despite some cursory dialogue on the need to engage northern stakeholders and to address northern concerns, there has been no meaningful engagement by the government. We fail to understand the need for the government to rush this legislation, especially with the lack of response to FONOM and NOMA's concerns and recommendations.

FONOM supports the principle that legitimate expression should not be subject to intimidation. However, Bill 52 overshoots this mark. The reality in northern Ontario is that Bill 52 would give multinational groups with deep pockets the ability to use misinformation to target and threaten industries that our communities depend on.

The forestry industry in northern Ontario is the economic backbone in many communities within our region, and has consistently been a target of environmental groups. Forestry operations in the province of Ontario must adhere to some of the highest and most respected standards in the world. For example, under these standards, prompt regeneration and long-term monitoring must be undertaken following harvesting activities. As many misguided environmental groups would like you to believe, the industry does not wipe out forests, and in fact only harvests less than one half of 1% of the forest in Ontario each year.

Despite this, environmental non-governmental organizations, known as ENGOs, such as Greenpeace, continue to target these industries and their customers by spreading misinformation and producing groundless allegations against the economic drivers of our communities. Bill 52 will allow these groups to avoid accountability for spreading misinformation, so long as the subject matter of the communication seems to relate to a matter which is termed in the legislation as public interest, which Bill 52 does not define. We believe that a lack of definition has the potential to cause significant harm.

The forest product industry has faced significant challenges over the last several years, and is currently

experiencing a rebound. Allowing this legislation to pass without any amendments will only set the industry back. It will prevent forestry companies from protecting their reputations and standing up to those who are spreading misinformation about their operations. Furthermore, the legislation would create an unattractive business climate which will discourage investment and growth into the sector and the province as a whole.

The Ontario government, particularly the Ministry of Natural Resources and Forestry, has undertaken efforts to reassure and demonstrate that the provincial standards that the forestry companies must operate under are sustainable. Letting Bill 52 proceed as written will inevitably damage the credibility of the province and their defence of forestry practices in Ontario, and will send a strong signal that the government supports the activities of groups like Greenpeace to the detriment of the forestry sector.

The FONOM membership has passed a resolution in support of two recommendations for Bill 52 to balance the public interest. They include:

—legal action resulting from public participation would need to be reviewed by a judicial officer or other provincially appointed expert prior to being filed; and

—targeting the bill specifically to apply to volunteers and small community organizations with annual budgets of less than \$100,000.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Alan Spacek: The first recommendation: It is important that a robust and thorough process be in place to assess whether a case is a SLAPP suit before the statement of claim is filed. This would ensure that no one is forced to defend themselves against a baseless charge that amounts to a SLAPP suit in the first place, and ensures that the real intent of the legislation—the protection of public participation—is addressed.

It is imperative that Bill 52 takes a balanced approach, ensuring that northern industries are able to operate for years to come without misguided groups attacking their reputations and customers, all of which is vital to northern Ontario.

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The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Spacek. The floor now passes to the NDP. Mr. Vanthof.

Mr. John Vanthof: Thank you, Mayor Spacek, for coming and for being such a good advocate of northern Ontario and of the forest industry. Looking at the handouts you've given—I, as a northerner, and a lot of my constituents depend on forestry—these, in my opinion, would be slanderous.

I think one of the fears of northerners is that often ENGOs misrepresent how northern forests are actually managed. It's not old growth; it's all managed. Is the issue that you, or FONOM and forestry companies, are afraid that what I find to be an obviously slanderous document would pass through, that ENGOs would be allowed to print this at will?

Mr. Alan Spacek: My opinion is that it would encourage them to do more of that. I'm not sure that some of these could be termed as slanderous—

Mr. John Vanthof: No, but they are meant to hurt the sector.

Mr. Alan Spacek: Yes.

Mr. John Vanthof: I think we can agree on that.

Mr. Alan Spacek: You notice they're quite skilful, though, in that, in the case of the Rite Aid one, they're not particularly targeting a company. They're targeting an industry, thus that fear we have about the wording in the legislation that says "the public interest." They could say, "Well, this is in the public interest, because we're not talking about Resolute. We're talking about the forestry sector as a whole."

Mr. John Vanthof: Yes. And could you just confirm for me—the Resolute mill in Iroquois Falls was very important to me—was Best Buy buying newsprint from the Resolute mill in Iroquois Falls?

Mr. Alan Spacek: I don't know that.

Mr. John Vanthof: Because to the best of my knowledge it wasn't. One thing we have to make sure of is that we represent the issues properly as well.

I'd like to thank you for taking the time to come.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Vanthof.

Just before I pass the floor to the Liberal government side, I'd just respectfully remind colleagues that there are matters, as I understand it, before the courts, particularly with regard to Greenpeace. Therefore, deliberations and material that are committed on the record may be material to that. I'd just caution you because, as you know, the directive, the standing orders and the parliamentary procedure is not to comment specifically on court cases.

The floor is now yours, Mr. or Mrs. or Ms.—going

once-Mr. Berardinetti.

Mr. Lorenzo Berardinetti: I appreciate your presentation today, but there is a balance struck in the bill so that the frivolous cases will be dismissed. Someone who is being hit with a SLAPP suit—who, let's say, gets a libel suit against them—can go to a judge and have that case dismissed if there are no reasonable grounds to continue that case. We have a test set out here in the legislation.

Is there some issue around that? Do you want to change the bill? Because I think anyone can go and do this, go before a court, if they feel that the case against them isn't really slanderous, or is frivolous and shouldn't

be dealt with any further.

Mr. Alan Spacek: I'm not sure I understand your question fully, but maybe it relates to our concern with the term, as used in the legislation, that states "public interest," which is not currently defined in law that we're aware of, as opposed to the term that is well-known in law, which is "bad faith." Maybe that speaks to—

Mr. Lorenzo Berardinetti: Yes, I've heard that before. I've talked to some of my colleagues about this. You would rather have the wording changed in the

legislation so that "bad faith" is put in there?

Mr. Alan Spacek: Yes. It was mentioned to me that there was already this type of legislation existing in Quebec and British Columbia. British Columbia repealed

their SLAPP legislation—it wasn't working for them—and Quebec used the term "bad faith" in their SLAPP legislation.

Mr. Lorenzo Berardinetti: So you want that included in the legislation here.

Mr. Alan Spacek: Yes.

Mr. Lorenzo Berardinetti: Okay. That's my question. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Berardinetti. We now pass to the PC side. Mr. Fedeli.

Mr. Victor Fedeli: You obviously sat through a couple of the times where I spoke about the Greenpeace issue and the Best Buy issue. This Rite Aid—I have to admit, I've not seen this. This is definitely new to us. You can either choose to expand on that, or I want to talk about the amendments that you propose in this package, the bad faith versus public interest or the \$100,000 cap. Your choice on that.

Mr. Alan Spacek: Well, I'll quickly comment on the Rite Aid campaign that's under way now. I think this is just one example of the companies that Greenpeace is targeting to stop doing business with Ontario lumber companies. They've sort of mimicked what Rite Aid, which is a large American pharmacy, uses as a flyer, and they've inserted pictures of what they say are improper logging standards, or endangering animals.

It's one that's very shocking, the pictures are very shocking. I don't have confirmation yet, but the bottom left picture, apparently, is of a logging operation in Kenora, Ontario, but it's about 10 years old. If you look at that area today after reforestation, it's growing in a very healthy state. Again, it's an example of the variation and the intensity that they use when they mount these campaigns.

Mr. Victor Fedeli: How much time?

The Chair (Mr. Shafiq Qaadri): About a minute and a half.

Mr. Victor Fedeli: Did you want to talk, then, about the bad faith versus public interest or the \$100,000? Did you want to delve into that?

Mr. Alan Spacek: Well, I've talked about the bad faith. But the \$100,000 recommendation that we have, I want to clarify that that doesn't mean that any individual or volunteer group would have total resources of \$100,000. They may need significantly more if they're engaged in a legal suit. It was just a guideline as a suggestion to start a discussion about having some limit on who would be protected by the suit.

We do have a two-tier system in Ontario now, where if your income is at a certain level, you qualify for legal aid. We're suggesting that there could be a hybrid version of that for this legislation that would prevent the multi-million dollar multinationals from taking advantage and seeking protection behind it.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Victor Fedeli: We heard earlier this morning from Mr. Potts. He told us that he's supportive of the forestry sector, so we're obviously looking forward to

him supporting these two amendments that the forestry sector is putting forward today.

We appreciate the time that you took to come from Kapuskasing, Your Worship. I just wish we had more time to delve into this.

Mr. Alan Spacek: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. I don't believe that Mr. Spacek is an elected mayor, but in any case, we're happy to extend—

Mr. Victor Fedeli: Yes, he's the mayor of Kapus-

kasing.

The Chair (Mr. Shafiq Qaadri): Oh, is that right? *Interjection*.

The Chair (Mr. Shafiq Qaadri): Thank you. I have him written down as the president of the association. Fair enough.

Your Worship, thank you for your presence. Thanks for your deputation and your written materials.

MIDHURST RATEPAYERS' ASSOCIATION

The Chair (Mr. Shafiq Qaadri): We will now move to our next presenters. Please come forward, Ms. Buxton, Mr. Strachan and Ms. Prophet of the Midhurst Ratepayers' Association. Welcome, and please be seated. Please do introduce yourselves as you speak. I'll let you take your seats just before I begin the time.

Ms. Sandy Buxton: Most courteous of you. Thank

you.

The Chair (Mr. Shafiq Qaadri): Ready?

Ms. Sandy Buxton: Almost.

The Chair (Mr. Shafiq Qaadri): All right. Please begin.

Ms. Sandy Buxton: Good afternoon, everyone. Thank you for the opportunity to appear before you. My name is Sandy Buxton. I am president of the Midhurst Ratepayers' Association. With me today are our vice-president, David Strachan, and Margaret Prophet, our secretary and communications director. They are here to assist me in answering whatever questions you may have.

Firstly, it's our wish to thank the province for putting forward this bill and to also thank the huge majority of

MPPs who are supporting it.

Ratepayer associations are the backbone of citizenfocused democracy. Their sole purpose is to represent the best interests of their community. Backed by the large majority of Midhurst residents who oppose this megadevelopment, we have a mandate and a responsibility to continue fighting to stop costly sprawl in our small village, and also to promote financially and environmentally sensitive and pragmatic growth.

In so doing, we have endured a barrage of insults, insinuations and intimidation from the developers over a considerable period of time. Three predecessors have resigned during the last five years—presidents, I'm referring to—due to potential SLAPP suits and developer intimidation. We've also had trouble attracting board members because supporters worry about a similar fate occurring to them.

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On our shoestring budget, we've been forced to pay a huge sum for liability insurance, just in case a SLAPP suit should occur. Some of our most generous donors have requested anonymity, fearing an attack of some kind by the developers. This, ladies and gentlemen, is the climate we operate in.

Our region is familiar with SLAPP suits and intimidation. Cottagers in Innisfil, the infamous Big Bay Point development, were sued—all cases were ultimately thrown out—and residents of Hillsdale were intimidated

by the same developer we are facing.

The effects of SLAPP suits are like ripples in a pond: Word spreads, and media coverage ensues. The end result is that an already uneven playing field tilts even more alarmingly. Concerned citizens keep silent, for fear of sharing the same fate as others before them, and a chill descends on public discourse.

Some of the epithets that have been hurled at us by the developers are the following: "self-interested," "self-appointed," "NIMBY," "shameful," "reprehensible" and "a ... pattern of deception." We have been portrayed as

liars and obstructers of the democratic process.

We have also been accused of failing to be part of the regulatory process. I can tell you that this is easier said than done. At the OMB, we've either been finessed out of party status as "frivolous and vexatious" or bullied to the point of being afraid to make a participant statement. Of course, the developers have used this against us, trumpeting that we must have agreed with all their points since we didn't participate more fully—a perfect Catch-22.

In the most recent municipal election, in 2014, like other civic-minded organizations, we sought to mobilize residents to vote and to inform them about each candidate's platform. Working from our all-candidates survey, other materials and conversations, we took the bold step of endorsing five candidates for Springwater council. All were on the record as opposing the Midhurst Secondary Plan. As an aside, four of them were elected, including the mayor and deputy mayor.

Predictably, then, residents were bombarded by flashy flyers and full-page ads from the developers—some using our own colours and format, for extra impact—warning that "someone was lying" when saying that the MSP could be stopped. They insinuated that we were not only thwarting democracy but were driven by self-interest.

Our board is made up of respected community members of all ages and stages who devote extremely long hours to preserving and protecting Midhurst for the next generation. I ask you, is that self-interest? We don't think so.

Our struggle continues despite the—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Sandy Buxton: Thank you. Our struggle continues despite the ever-present jeopardy of a SLAPP suit. Current board members are a tenacious lot and will not give in or walk away. That said, adding the ordinary

citizen's voice to a high-stakes, politically charged topic like sprawl development in rural Ontario should not be this dangerous.

Once our testimony is published, as we know it will be, we expect the developers may well resume writing us nasty letters. They may also write to this committee, to our local—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Buxton. The floor now passes to the government side: Signor Berardinetti.

Mr. Lorenzo Berardinetti: Thank you, Ms. Buxton, and your ratepayers association, for coming here today. So you're generally supportive of this legislation. You want it to come—

Ms. Sandy Buxton: I cannot hear you, sir. Could you speak closer to the mike?

Mr. Lorenzo Berardinetti: You're supportive of this legislation.

Ms. Sandy Buxton: Absolutely, we are, yes.

Mr. Lorenzo Berardinetti: Okay. The other question I had for you is, some people have talked about retroactivity, like making the bill apply to people who are in situations where they're being sued—

Ms. Sandy Buxton: Where SLAPP suits are under way—is that your point? Yes?

Mr. Lorenzo Berardinetti: Yes. Do you have any thoughts on that?

Ms. Sandy Buxton: It's our considered view that there should be retroactivity, for all the reasons that you've been hearing endlessly from many parties, including ourselves. Those people are in a terrible situation, and their pockets are being drained dry and their lives put under a huge cloud while this is going on. So, yes, we definitely support retroactivity.

Mr. Lorenzo Berardinetti: Those people are still in the midst of legal proceedings—

Ms. Sandy Buxton: That's correct.

Mr. Lorenzo Berardinetti: —and spending money on lawyers to defend themselves.

Ms. Sandy Buxton: That's right, and it's a highly expensive and personally fraught experience.

Mr. Lorenzo Berardinetti: Yes, okay. Those are my questions. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Berardinetti. To the PC side: Mr. Hardeman.

Mr. Ernie Hardeman: Thank you very much for your presentation. It was very interesting. I was going to say, for the little time I have left, maybe I should just give you that time to finish your presentation.

Ms. Sandy Buxton: That's most kind of you, sir.

Mr. Ernie Hardeman: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hardeman. To the NDP side: Mr. Vanthof—

Ms. Sandy Buxton: I believe I'm-

Mr. Ernie Hardeman: No, she's using my time.

The Chair (Mr. Shafiq Qaadri): Oh, I'm sorry. Please go ahead then.

Ms. Sandy Buxton: It's short. There will still be time for you.

Once our testimony is published, we expect the developers may well resume writing us nasty letters. They may also write to this committee, our local and county governments, MPPs and key ministers, maligning us once again as self-interested, inconsequential, uninformed and "too late to the party." Why ditch a tactic that distracts from the facts and might isolate us from supporters?

We underdogs need a fighting chance to carry out the will of the people. Please protect public participation so

that we can do that.

Thank you.

Mr. Ernie Hardeman: Thank you.

The Chair (Mr. Shafiq Qaadri): Time is ceded, Mr. Hardeman? All right. Now the floor passes to the NDP: Mr. Vanthof.

Mr. John Vanthof: Thank you very much for coming and relaying—

Ms. Sandy Buxton: Please speak into the mike, sir. I

have a hearing problem.

Mr. John Vanthof: Oh, sorry. Thanks very much for coming and for relaying, in a very brief time, your history. Just to be clear, you have tried to participate in all of the OMB stuff. You've done your best to do that and have still run into these roadblocks?

Ms. Sandy Buxton: That is correct. It's onerous for a small organization like ours to appear at the OMB. Party status usually requires having a lawyer in order to make any headway, and those folks cost money. So that's one issue.

In the particular case where we had accepted that we could only be a participant because we couldn't afford a lawyer, I personally was intimidated physically by a group of developer lawyers hanging over me no further than the end of this mike, like this, and told, "You'd better think carefully about what you've going to say. I'm telling you, Sandy"—or Mrs. Buxton, whatever they said—"you're going to be cross-examined severely. You are going to get a rough ride. Think about this."

Between the menacing behaviour—I don't tolerate people interfering with my personal space to that degree, where they're here and they're all around me—the language they were using and the looks on their faces, I thought, "Even I can't go through this. I have not got a lawyer and I am scared, completely scared, to get on the stand." That's wrong. That's anti-democratic.

Mr. John Vanthof: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Vanthof, and thanks to you, Ms. Buxton, and to your colleagues for your representation on behalf of the Midhurst Ratepayers' Association.

Ms. Sandy Buxton: May I add one short point?

The Chair (Mr. Shafiq Qaadri): Only—

Ms. Sandy Buxton: Really short.

The Chair (Mr. Shafiq Qaadri): Go ahead.

Ms. Sandy Buxton: You're generous, and I appreciate it.

We did not come with prepared material for you. We have a lot of it. We have letters, we have flyers, where it

has been said in black and white that we're liars—and we fact-check, as was recommended earlier. If at any time, any people on the committee would like to have that material, we would be glad to supply it to you. We were not sure, as ordinary citizens, what was expected of us today. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Buxton. What I would just say is that any materials that you feel the committee should have, you may submit a single copy or multiple copies to our Clerk by 6 p.m. today, and it will distributed. Thank you very much.

CANADIAN CIVIL LIBERTIES ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to please come forward: Cara Zwibel of the Canadian Civil Liberties Association. Welcome, Ms. Zwibel. Please be seated. You've seen the protocol. Please begin.

Ms. Cara Zwibel: Thank you. I'd like to thank the committee for inviting the Canadian Civil Liberties Association to speak to you today about Bill 52.

As you may know, CCLA has been around for over 50 years and has been working in Canadian courts, Legislatures and classrooms to promote and protect the fundamental rights and freedoms of Canadians. We are an organization with a strong and proud history of defending freedom of expression, and we welcome the introduction of the Protection of Public Participation Act, 2015.

I know my time is short, so I want to make a few brief points and, hopefully, share some information and thoughts with the committee that you may not have heard from other witnesses.

First, I know that the committee has heard from a lot of environmental NGOs about the need for this bill. I want to stress to the committee that while the bill is certainly important for these groups, they are by no means the only ones that stand to benefit from this legislation, nor the only ones that need it to protect vital free speech interests.

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The CCLA hears from individuals not just in Ontario but from across the country who are facing lawsuits or are being threatened with litigation because they are critical of their locally elected governments, because they engage in community activism or because they choose to boycott businesses whose practices they disagree with. There are some examples in our written brief, which I think you have. Some of them relate to individuals who have already addressed this committee.

This kind of expression that I've just mentioned is the mark of engaged citizens. There shouldn't be a punishment or a price tag for being engaged in important matters of public interest. To the contrary, this kind of expression deserves significant protection, and the early dismissal mechanism created by the bill is an important form of that protection.

Second, I know that there have been suggestions that jobs will be lost and businesses taken down by this bill. I would submit to you that there's no evidence that this is the case, and also that it's worth noting that some of the most business-friendly states in the United States have enacted anti-SLAPP legislation. Indeed, many businesses have taken advantage of that legislation.

The CCLA does not agree with some of the witnesses who have suggested amendments to restrict the availability of the early dismissal procedure to individuals or organizations with a certain sized budget or annual revenues. In my view, if you add an amendment that limits the availability of this procedure in that way, the bill, with respect, won't be worth the paper it's written on.

The bill is designed in part to recognize the resource imbalances that often exist between plaintiffs and defendants in these kinds of cases, but it is also there to ensure that no one is forced to defend, over many years and spending many dollars, a lawsuit that has little merit and that chills or hinders debate and discussion on matters of public interest.

Third, the bill does not, contrary to what some say, grant a licence to libel. Cases with merit will proceed. Here I think it's important to understand a bit about how the law of defamation works. As it is right now, the law of defamation heavily favours the plaintiff. It is a strict liability tort, which means that a plaintiff has to prove only that a defamatory statement about them, one that might harm their reputation, was published or republished. After they've done that, the burden shifts to the defendant. There's no need for the plaintiff to prove that the defamatory statement was false and there's no need for them to prove any specific damages.

The early dismissal procedure is an important counterbalance to that overall system. I know you heard from some witnesses that the test should be tweaked and that perhaps the "no valid defence" part should be removed or there should be a bad-faith requirement added; the CCLA disagrees. The law would only require a plaintiff to prove reasonable grounds to believe that there's no valid defence. They don't have to prove that a victory for the defendant is an absolute certainty. This is not an unreasonable bar given the burden I mentioned on a defendant if a defamation case goes to trial.

We appreciate the concern that the law might have unintended consequences—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Cara Zwibel: —which is why we've suggested a five-year review clause be put in the bill so that this committee or the Legislature could assess the overall effectiveness in a few short years.

Finally, we urge the committee to allow the procedural changes contemplated in the bill to apply to any ongoing proceedings. In our view, there's no reason to immunize existing litigation from the early dismissal procedure, but many reasons to allow courts to dismiss cases that hinder public participation and that lack substantial merit, regardless of when they were commenced.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Zwibel. The floor now passes to the PC side. Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much. Were you finished or did you have a bit more?

Ms. Cara Zwibel: I just wanted to say that we believe it has the power to effect positive change in Ontario, and we urge swift passage of the bill.

Mr. Victor Fedeli: Your earlier last sentence—can you just elaborate on what you mean by that, not in lawyers' terms, just in lay terms?

Ms. Cara Zwibel: Sure.

Mr. Victor Fedeli: If you don't mind.

Ms. Cara Zwibel: You mean the retroactivity piece?

Mr. Victor Fedeli: Precisely.

Ms. Cara Zwibel: The issue is that there are lawsuits ongoing right now that, had they been started after this bill had been introduced, would benefit from this procedure and might be dismissed. Because of the timing, they won't be and the defendants in those cases will be forced to proceed, possibly all the way to a trial where they may ultimately be successful, but not until after years of having a lawsuit hanging over their heads and having to pay lawyers to engage in the process. So there is no reason, in our view, that this procedure—because that's what it is; it's a procedural change to the law, not a substantive change—shouldn't apply to existing litigation.

Mr. Victor Fedeli: How far back would you go?

Twenty years? Fifteen years?

Ms. Cara Zwibel: If there's litigation that was started 20 years ago and still isn't resolved, then yes. But to the extent that that's the case, it really exemplifies the need

for this kind of legislation.

A plaintiff can initiate an action and just let it sit. It can just sit for years. Before you can get a court to dismiss it even just for delay—even just on the basis that the plaintiff hasn't done anything to move it forward—it's often many years before a court will do that. To have a \$7-million lawsuit or a \$100,000 lawsuit hanging over your head for two or three or four or five or six years is a pretty significant thing for most people.

Mr. Victor Fedeli: Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): To the NDP: Mr. Vanthof.

Mr. John Vanthof: Thank you for taking the time to explain your viewpoint of the bill; you've done a very good job. If you would have any other viewpoints—I have no questions, so if you'd like to take a couple of minutes—

Ms. Cara Zwibel: I would like to address the suggestion about the bad-faith requirement and why I think that would be a problem. I think already our civil litigation rules allow for courts to dismiss cases that are frivolous—or vexatious, as they call it; that's the language in the rules. Usually that's where a bad-faith consideration might come in. To get a dismissal under that procedure is difficult, and it's hard to prove what's in someone else's mind. I think that the Anti-SLAPP Advisory Panel that looked at this issue recognized that the

dismissal procedure shouldn't be based on a plaintiff's motives for bringing litigation, because it's hard to tell why people bring litigation. So I would encourage the committee not to consider an amendment that would make that requirement.

Mr. John Vanthof: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Vanthof, and thanks to you, Ms. Zwibel, for your deputation on behalf of the Canadian—

Mr. Arthur Potts: Don't we get a chance to have a word, Chair?

The Chair (Mr. Shafiq Qaadri): Thank you. You do. Please.

Mr. John Vanthof: A bit too efficient, Chair.

The Chair (Mr. Shafiq Qaadri): Yes. Thank you. All yours, Mr. Potts, or Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Thank you, Chair. Thank you, Ms. Zwibel, for coming in and speaking with us today.

I'd like to talk to you a little bit about the 60-day judicial review process. Tell me, do you believe that that 60-day judicial review process is an adequate system of checks and balances that ensures that organizations, as well as companies, do not have a right to slander?

Ms. Cara Zwibel: My understanding is that the 60 days starts to run from the day you file your notice of motion. The goal is that you would call the court and get a court date before you file that notice, so that when you serve it on the other side, you'd have a date already.

I think it might be the case that the parties involved would agree that they actually might need more time to pull together the kind of evidence that's required for this motion. If that's the case, and they agree and consent to it, our rules of civil procedure allow for deadlines to be extended on that basis.

I think that there are some cases where the 60 days will be adequate and where it will be important—because you'll have defendants who really can't afford any legal assistance much beyond that period of time—and other cases where more time might be required, and that can be accomplished by the parties under the existing rules.

Ms. Indira Naidoo-Harris: Okay, great. So you really feel that the 60 days is enough time to hear the defendant's motion, but when it comes to rendering a decision, that will be after that time, and there's adequate space there, in order to get the job done—

Ms. Cara Zwibel: The decision will come whenever the court decides. If the Legislature could legislate some timelines on when courts have to render decisions, certainly I know many lawyers would appreciate that, but I don't think that's how the system works. Judges decide when they're ready to give their decision, and they'll do that.

Ms. Indira Naidoo-Harris: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Zwibel, for your deputation and presence on behalf of the Canadian Civil Liberties Association.

Ms. Cara Zwibel: Thank you.

MS. LOUISETTE LANTEIGNE

Le Président (M. Shafiq Qaadri): Je voudrais maintenant inviter notre prochaine présentatrice : Louisette Lanteigne. Bienvenue. Welcome.

Ms. Louisette Lanteigne: Hi.

The Chair (Mr. Shafiq Qaadri): As you've seen the protocol, you have five minutes and then a rotation by questions. Thank you for your written materials. Please begin.

Ms. Louisette Lanteigne: Very good. My name is Louisette Lanteigne. I live at 700 Star Flower Avenue in Waterloo, Ontario.

I support anti-SLAPP motions within 60 days to reduce duress on all sides, and I would like it applied for retroactive cases too. I want the law accessible for individuals and groups, regardless of their budgets, based on the merits of the case, not the size of the wallet.

I built a blog site specifically to report environmental and labour law infringements that I witnessed. It featured photos, addresses and times. It was shared with the city of Waterloo, the region of Waterloo, MNR, MOE, Ministry of Labour and the TSSA. Labour Minister Steve Peters said that my work contributed in 39 charges and 309 stop actions and I had letters of thanks from municipal officials and ministry officials.

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On the website was a letter written to Minister Dombrowsky mentioning a leaky diesel tank across from a children's school. It said: "Again, this is on the property of the same developer." That was the mistake I made, because the housing company sign was on the property, and that housing company was owned by a certain developer when they built my subdivision and did similar infringements. When I saw that sign again, I assumed it was still owned, but it had been sold off to another party. There was no reasonable way I could know that, but for that simple error, I was sued for \$2 million. I could defend by absolute and qualified privileges, but I was told that it would cost \$40,000 to \$70,000 in legal costs and without anti-SLAPP laws, there was no chance of recovering that fund. We made too much for legal aid, too little to keep our home. I had three kids, a family. This was an attack on my husband's savings; I was a stay-at-home mum.

It was the first time a blog site ever got SLAPPed so the news went international. I was overwhelmed by public attention, embarrassment and fear. I tried to find a local lawyer but they had conflicts, and that's par for the course for many developers. I found a solicitor in Toronto who asked me to bring my mortgage document, but I didn't know why. The developer was suing me with the lawyer who closed the mortgage on my house and he didn't bother to tell me my rights because he was interested in the publicity.

The day before the mediation, I was stopped at a stoplight with my baby in the back seat. A guy in a truck raced out of the parking lot and rammed into the side of my vehicle. He then backed out and rammed a second

time, this time pushing me into oncoming traffic. It took two hours for the police to arrive; it was the middle of winter. My car was a write-off. They didn't investigate. It wasn't worth it; my car was that cheap.

At the mediation, my lawyer told me to leave the room so he could talk to the developer's solicitor. When I went back in, there was an apology I did not write on the table. I told them that I took no issue with admitting the error I made, but this other statement was false. Basically, the apology stated that they didn't do anything in my subdivision. I had photographic evidence and I had city council meetings to prove it, and I showed it to them. But in spite of that, my lawyer comes up to me and says, "If you don't sign, they're going to bleed you dry."

I could not afford to fight for the wording I wanted. I was under duress mentally, physically, emotionally. I had no car and \$8,000 in legal costs up to that point to pay, so I signed. I didn't pay a single penny, but I'll still regret doing that for the rest of my life, because it was a lie and the conditions came with a gag order that I could not talk

of any of these things.

I was instructed to post the apology on my website and in the press. My solicitor was excited about the prospect of the publicity. He actually called my home saying, "Hey, have you read anything?" I could not understand how anyone can legally force a person to lie, but when I saw the apology in the paper, I threw up. The body is not designed to take this. I suffered a nervous breakdown. My mum had to come in and watch my kids.

The result was a form of reverse defamation. I was removed as a guest panelist at the 75th anniversary of Nature Canada. I was a delegate because of my advocacy work. I was one of the panellists and I was removed because of this scandal. My reputation with the news-

paper and the public was ruined.

Two years later, a SLAPP lawsuit—I couldn't raise funds; nobody trusted my opinion; right? Two years later, I went to the OMB against this same developer. There were over 20 people at the mediation and when I started to speak about my issues, the OMB-appointed mediator interrupted me and asked me to go into a separate room. He tried to talk me out of the process. He literally said that going to the OMB was akin to walking into a chain-saw. I stated that my issues have merit and I have experts, and I am in the process of refinancing my home. They rushed the mediation process without merit. Without my consent, he went back into the room and cancelled the meeting. It was the only chance I had to resolve the issues, and for that, I was sued with a motion to dismiss—well, not sued.

I survived the motion to dismiss hearing and I won that OMB appeal based on the scientific merits. We won by way of the experts' minutes. Then, we had a hearing to quash the summonses because the issues were resolved, and the press printed that I lost the OMB appeal. Since this time, 10 years later, the OMB refuses to publish my ruling on their website—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Lanteigne. I need to pass the floor now to Mr. Vanthof.

Mr. John Vanthof: Thank you very much for coming and relaying your experience. I have no questions, if you would like to-

Ms. Louisette Lanteigne: Yes. Six months after-

Mr. John Vanthof: —further use my time? Ms. Louisette Lanteigne: Oh, I'm sorry.

Mr. John Vanthof: Oh, no. That's fine.

Ms. Louisette Lanteigne: I've been waiting 10 years.

Six months after I witnessed the violations to the conditions of the ruling, I filed a certified copy of the OMB decision after witnessing them doing cut-and-fill operations and de-watering of the creek when they were supposed to begin the hydrostatic tests—they were supposed to put a mini-piezometer in the creek to determine the water flow. Instead, they did a reverse-flow of the creek, emptied it out and then they put the piezometer in.

I called every level of ministry. There's no enforcement for OMB. Even the OMB stated, "The most we can do is shelve your complaint unless you want to take it out

of pocket in contempt of court."

So I went to the Attorney General and I went to the courthouse. I said, "What is the protocol to proceed with contempt of court because I've already filed the ruling?" Nobody would tell me. All agencies said, "Get a lawyer." After spending \$27,000 to secure my ruling and winning it. I had no money for compliance. There was nothing. It was a kangaroo court.

I care about these issues because a moratorium should be applied on development activities until matters are resolved when it comes to issues like this. I had workers call my home and tell me how scared they were about the fact that the building inspector was beaten up here, and there was an article to support that. My sister had a Ministry of Transportation guy who came to our house bloodied up, and they fixed him up. He was too scared to

report this particular developer to the police.

I had former employees telling me about illegal workers from Portugal, and the reason why they're falling off the roof unharnessed is because they get paid by the hour and the harness slows them down. When they fall off, they're bought off because they're not registered to work in Canada, which explains why my dryer vent was bricked over, my garage is illegally sized and my next-door neighbour's house didn't have insulation in the bedroom. Her house sank to the point that the support beam needed replacing.

My other neighbour had to have their house rewired, and they were evacuated during that time because it was a fire hazard, and it goes on. We had floods. We had water pressure issues. I had E. coli from the broken water main. They set the chloride levels to that level. When they fixed the pipe, our chloride was so strong, it wasn't fit for human consumption. I found out because my girlfriend makes money making scarves—the chemicals augmented her colour. She had the water tested, and it wasn't fit for human consumption. This was my water. My baby is drinking it, and me.

So I fought them, and I continue to this day, to secure the safety of people in communities. And that's my story. It's the first time in my life I've felt the courage to speak the truth in 10 years' time. I would say words like "mafia-ish" to explain the process. Having been sexually abused—it's similar.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Vanthof. I need to pass the floor to the government side. Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Thank you for coming forward today with your story. We really appreciate it. There's a lot of material here that I went through, and I tried my best to speed-read through it. Is there anything else—you proved what was in the case.

Ms. Louisette Lanteigne: There's a lot, yes, because I tried to find out what was happening with this firm. Why would they come down so heavy on a non-issue? There are only 15 individual people who visited the website when they filed their statement of claim, and my husband and I are two of them. So there are only 13 people who saw the site.

I started digging and I found out illegal banking and fraud charges from Germany. I went to the RCMP and the local police and they said, "We can't do anything. It's hearsay." Everything is hearsay. Everything I was told by the workers and the former employees—I can't submit that. I encouraged them to go to the labour minister, though. I encouraged everybody I could, but because I was not a shareholder, it means nothing.

So I followed the trail. There's a lot of money from Germany coming into Canada for property investment and development, and a lot of 'Ndrangheta going into Germany to do it. That's how they launder money. It's in the press. I didn't know—I don't know to this day—if that even played a role or if that was just something completely on the side or how these things are, but I tried to convey all these articles. I don't know if it has relevance or not. I honestly don't. I'm not in a position to even understand it. All I know is I was scared and odd things happened and I did my best to work around it. I was scared so much today, I brought this to the police and I said, "If I disappear, I want you to have it in hand." That's the kind of fear you get after these things you go

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Berardinetti. We'll now pass it to the PC side. Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much. It's obviously-

Ms. Louisette Lanteigne: Traumatic.

Mr. Victor Fedeli: - very traumatic for you, but it appears to have been a bit of a release for you as well.

Ms. Louisette Lanteigne: Yes. Look at my hairshorn—because it's so much similar to sexual abuse. You just don't want to make yourself a target. I cut off all my hair. I was so under duress, just to speak.

Mr. Victor Fedeli: Are your legal issues over?

Ms. Louisette Lanteigne: Yes. I have no malice against these people. I never meant to harm them. All I was trying to do was say where the diesel spill was so they could clean it up. To the best of my ability, I gave every bit of information. I thought I was truthful. I

certainly wouldn't have gotten the kudos from the ministry for something false or defamatory or mean. I didn't want that. I didn't want to hurt anybody.

The minute I got the statement of claim, I called the lawyer up and I said, "Please meet with me. If I can make amends, I'll gladly do so. I don't know what I did. Just meet with me." They never returned my call. They went to my parish priest to act as a mediator—he's now a monsignor. I never met with them because I thought it was vulgar that they went to my place of worship.

Mr. Victor Fedeli: You've obviously been through a very traumatic incident.

Ms. Louisette Lanteigne: On many levels, yes.

Mr. Victor Fedeli: We commend your bravery for being here today and sharing that story with us.

Ms. Louisette Lanteigne: Thank you, sir.

Mr. Victor Fedeli: Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fideli

Ms. Louisette Lanteigne: Thank you, all.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Lanteigne, for coming forward and sharing your very personal and trying story as well as your written deputation, which is in my pocket right now. Thanks very much for coming.

The amendment deadline is for 12 noon tomorrow.

I would just once again call the attention of the justice policy committee to remind them that this is approximately the last official duty of our Clerk in the Legislature of Ontario.

Committee is adjourned.

The committee adjourned at 1512.



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Protection of Public Participation Act, 2015

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Première session, 41^e législature

Journal des débats (Hansard)

Jeudi 8 octobre 2015

Comité permanent de la justice

Loi de 2015 sur la protection du droit à la participation aux affaires publiques



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 8 October 2015

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 8 octobre 2015

The committee met at 0900 in committee room 1.

PROTECTION OF PUBLIC PARTICIPATION ACT, 2015

LOI DE 2015 SUR LA PROTECTION DU DROIT À LA PARTICIPATION **AUX AFFAIRES PUBLIOUES**

Consideration of the following bill:

Bill 52, An Act to amend the Courts of Justice Act, the Libel and Slander Act and the Statutory Powers Procedure Act in order to protect expression on matters of public interest / Projet de loi 52, Loi modifiant la Loi sur les tribunaux judiciaires, la Loi sur la diffamation et la Loi sur l'exercice des compétences légales afin de protéger l'expression sur les affaires d'intérêt public.

The Chair (Mr. Shafiq Qaadri): Welcome, colleagues. As you know, we're here for clause-by-clause consideration of Bill 52. An Act to amend the Courts of Justice Act, the Libel and Slander Act and the Statutory Powers Procedure Act in order to protect expression on matters of public interest.

Premièrement, je voudrais accueillir nos traducteurs et coordinateurs de français.

Welcome to colleagues from the French legislative services branch.

The floor, I believe, is now open for presentation of motions. We have PC motion number 1—

The Clerk of the Committee (Ms. Tonia Grannum): Actually, we have to start with the section, because that doesn't happen until section 3-

The Chair (Mr. Shafiq Qaadri): Fair enough.

Incidentally, I should also welcome Tonia Grannum, who is pinch-hitting for us until we acquire a more qualified candidate.

Laughter.

The Chair (Mr. Shafiq Qaadri): Après.

We have section 1. We've received no amendments to date for that. Are there any comments on section 1 before I proceed to a vote? Seeing none, shall section 1 carry? Carried.

Similarly for section 2, we've received no amendments to date. Are there any comments before we proceed to the vote? Seeing none, shall section 2 carry? Carried.

The six amendments that we have received so far are all to do with section 3. They're all PC motions.

The floor is now yours, Mr. Miller.

Mr. Norm Miller: I move that subsection 137.1(3) of the Courts of Justice Act, as enacted by section 3 of the bill, be struck out and the following substituted:

"Order to dismiss

"(3) On motion by a person against whom a proceeding is brought, a judge may dismiss the proceeding if the moving party satisfies the judge that the responding party brought the proceeding in bad faith for the improper purpose of discouraging a person from engaging in expression."

The Chair (Mr. Shafiq Qaadri): The floor is yours if you would like to offer comments.

Mr. Norm Miller: Yes, I will make a comment. The key part of this is the term "in bad faith." Essentially, it's replacing "in the public interest" with "in bad faith." We heard from a number of people coming before the committee that the term "bad faith" is something that's understood in law and much more specific and clearer than the term "public interest." This was supported by the Ontario Forest Industries Association. When Mr. Hillier, our lead on this, was questioning Brian Gover of the Advocates' Society—he agreed with MPP Hillier in committee, when Mr. Hillier suggested replacing the public interest concept with the concept of bad faith. Mr. Gover agrees that "bad faith" has abundant meaning in Ontario's legal traditions. A number of the northern mayors-Peter Politis, mayor of Cochrane—also supported this change. I think it just makes this bill a lot more specific.

We've seen in some other legislation, in particular the Endangered Species Act, which I believe passed in 2007—the term "overall benefit" was used in that, and it was similarly vague and not understood in legal terms. From what I understand, that is causing all kinds of problems in the courts. In fact, in the minority Parliament last year, your government made efforts to try to change that.

So it would be better, I would suggest, to change it before the law is passed than to pass the law with vague language that will be problematic.

The Chair (Mr. Shafiq Qaadri): Signor Berardinetti. Mr. Lorenzo Berardinetti: We'll not be supporting the amendment. The bad-faith test, if it has to be applied at a point in the proceedings, requires a higher evidentiary standard. The party would have to actually present more evidence in order to create the bad-faith test. The expert panel was against creating "bad faith" as a test because they see it as being too—I mean, not necessarily at this point in the lawsuit. It's basically an anti-SLAPP

bill, and you don't want to be using a bad faith test. There are other tests as we go along and throughout the bill that will protect public expression and, at the same time, protect the person who is being subjected to a SLAPP suit.

The Chair (Mr. Shafiq Qaadri): Further comments before we move—Madame Gélinas? Anyone? Thank you. We'll now—

Mr. Norm Miller: Recorded vote, please.

The Chair (Mr. Shafiq Qaadri): Recorded vote, as requested.

Ayes

Fedeli, Norm Miller.

Nays

Berardinetti, Delaney, Gélinas, Martins, Naidoo-Harris, Potts.

The Chair (Mr. Shafiq Qaadri): Motion 1 falls.

PC motion 2: Mr. Fedeli.

Mr. Victor Fedeli: Thank you. This is a motion to be moved in committee.

I move that section 137.1 of the Courts of Justice Act, as enacted by section 3 of the bill, be amended by adding the following subsection:

"Exception

"(3.1) A judge shall not dismiss a proceeding under subsection (3) if it arises from an expression made by a corporation or non-profit corporation with annual revenues that exceed \$100,000 or a person who made the expression in his or her capacity as an employee or independent contractor of such a corporation."

The Chair (Mr. Shafiq Qaadri): Thank you. The floor is yours for comments if you'd like, Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much. We've heard over and over how this bill is to protect the average citizen in Ontario. Some referred to it once in a while through the proceedings as "the little guy," just the average, everyday person. But we've also heard testimony that this will give—I quote the testimony of the former mayor of Timmins—professional environmental groups the right to defame. Of course, what they were referring to was the Greenpeace versus Best Buy campaign.

We've heard over and over the—it's called a cyber-activist request by Greenpeace Canada. They've sent out an email to all of their subscribers and they've given them five cyber-activist tasks. One is to write a false product review on Best Buy's website: "Be creative and make sure to weave in the campaign issues!"

This was a cyber-activist move by Greenpeace to thwart Resolute Forest Products from selling newsprint to Best Buy. Bill 52 would allow this type of cyber activity to continue to happen unchecked.

Here's the result of what happened: Best Buy threw the towel in. They gave in to Greenpeace. They could not handle the boycotts, they could not handle the cyberattack, they could not handle the false product reviews that came in. So they contacted Resolute and they cancelled the newsprint.

As a direct result of Best Buy's cancellation, Resolute shuttered their plant in Iroquois Falls. That's where the newsprint for Best Buy was made. That plant now is gone.

At one time in its heyday, it employed thousands of people. It's a huge industry. MPP Norm Miller and I are heading up there next week. We're heading up to the Cochrane area, the Iroquois Falls area. I'm hoping to take a message of hope to the forestry sector in Iroquois Falls, in northern Ontario, that we've struck a law that will protect the everyday citizen, but not give free rein to professional environmental groups, give them the right to defame.

In addition to the plant in Iroquois Falls, when many of us—some of us in this room, if my memory serves me correctly—travelled on the pre-budget consultations last July, we were in Fort Frances the week that Resolute shuttered that plant as well. A thousand people were put out of work that day, in one day. That town is struggling now. A thousand people in tiny little Fort Frances—they're gone; the jobs are gone. The plant is shuttered. Iroquois Falls Resolute is silent.

0910

Norm and I will likely have no trouble finding a breakfast nook in the morning. We're both familiar with Iroquois Falls, Cochrane and all of the communities that survive only because of the forestry sector. We won't have trouble finding a place to stay, because 63 of the mills in northern Ontario are closed today, most never to open again. Eight out of every 10 logging/lumber-mill operations are closed in northern Ontario, likely never to open again.

This cyber-attack on Best Buy was not alone. We saw the cyber-attack on Rite Aid as well. That was evidenced here in this committee. Our amendment will protect, as we've called them here many times, the little guy, the average consumer, the average person who speaks out. They will be protected by this bill; that's why this bill is here. But this also protects the \$300-million corporations, like Greenpeace and others, who have free rein to tell people to write a false product review. This will give them the reins.

Our amendment is meant to stop that from happening. It's to continue to allow the small non-profits who are doing such great work—it gives them a free hand. But if you're a company with millions in annual revenue, with the resources to know what to do about defamation, know how to handle it and have the horsepower to protect yourself in a lawsuit, you shouldn't be covered under this act. This is for the little guy.

That, Chair, is why we are bringing this amendment to the floor.

The Chair (Mr. Shafiq Qaadri): Comments? Madame Gélinas, and then to the government side.

M^{me} France Gélinas: I would say that I support a lot of what MPP Fedeli had to say. I mean, I represent

northern Ontario as well. It's not 63 mills that have closed now; it's 65, and the chances of those mills coming back to northern Ontario are, as you said, pretty slim to nil. It's the same thing with the logging operations. We all thought that forestry was going to rebound, but it has not happened.

If I believed that the amendment was going to change this, I would vote for it 16 times over. I want forestry to come back. Most of the riding that I represent has made its living in forestry, and now millions of dollars of equipment, equipment that people own—you walk through the backyards of the people I represent and you see that huge forestry equipment, tarped and collecting rust because there is no more work for those people, who still have to make payments on that equipment. The story goes on and on.

I support all of what he said, but I don't see how putting it at \$100,000 is going to achieve this. I can think of Big Brothers Big Sisters in my riding; they do take in revenue of more than \$100,000. It's a very, very solid organization. They help thousands of kids—maybe not thousands, but hundreds of kids in Sudbury and Nickel Belt, and they are the little guy. They raise every one of those \$120,000 that make up their budget, one dollar at a time, and yet they wouldn't be covered anymore.

So I don't think that because you have annual revenues of over \$100,000 as a not-for-profit corporation, you are not the little guy anymore. Certainly, if you look at the meagre resources of Big Brothers Big Sisters, they are the little guys; they don't have any paid staff. They take all of their revenue to support basically little guys and little girls who need the protection of Big Brothers.

I could name you many more organizations like this that take in more than \$100,000 in revenue but they have no staff. All of the charitable donations that are made to them are to help the people who are in their mandate to help. I want them to be covered in the act.

When he talks about multi-million dollars, I get it. The story that he told about Resolute is absolutely true. But setting the bar at \$100,000 is not going to bring back the mills in Nickel Belt, it's not going to bring back the logging in Nickel Belt, yet they are going to take out of the bill people who still need the protection of this bill. So the direction is right; the spirit of it is right. I think the amount is wrong.

The Chair (Mr. Shafiq Qaadri): Merci, Madame Gélinas. Mr. Potts and then Mr. Berardinetti.

Mr. Arthur Potts: I'd like to pick up on the comments of Ms. Gélinas. The reality is that Greenpeace did not have the protection of this legislation when all these events transpired. It's certainly not the intention of this legislation to protect fraudulent and harmful, slanderous opportunities. There's a whole other dynamic going on here which is affecting the industry.

I know Mr. Fedeli would like to make this about us not supporting forestry because we won't be supporting this motion, but the reality is, our government has done tremendous work in trying to promote this industry. It is a growing industry. We've put almost \$1.3 billion since

2005 into the industry. We've created OntarioWood. We've just recently done new building code changes so that we can do six storeys of wood. These are all good things which are encouraging the industry and developing the industry.

We've also heard very clearly from professionals—lawyers, the Advocates' Society, I think, Mr. Klippenstein—that this amendment would create two tiers of legislation, those who can access and those who cannot, which would be unprecedented. The reality is, even a large corporation should be protected against another large corporation that is making frivolous, slanderous accusations that don't have a chance of success.

It's not just the little guy; it's protecting against abuse of the court system, using slander as a tool to reduce public participation. This amendment would not advance the purpose of this bill in any way, so I certainly will be voting against it.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts. Mr. Berardinetti?

Mr. Lorenzo Berardinetti: We will not be supporting the amendment. I think it's important to note that we have nothing against—we're not trying to favour a particular group; \$100,000 is an arbitrary amount. Someone else could say it could be \$200,000 or \$150,000. But a number being used as the threshold is really not fair to everyone involved in a SLAPP suit. The proposed motion would restrict the availability of the bill's early dismissal procedure based on resources. If this motion were to pass, the bill's protection would not be available to non-profit corporations with annual revenues of \$100,000-plus.

The expert panel specifically recommended against excluding certain groups from the bill's protection. The panel's view was that the bill should apply to any party to a litigation, since the value of promoting public participation and freedom of expression is shared by all, not just those with limited resources.

This bill does nothing really to harm any group, but we want to be fair. I think it's appropriate that we be fair to both sides. The courts will recognize when a case should be thrown out as being a SLAPP suit. So we're not going to be voting in favour of this amendment.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. Naidoo-Harris and then Mr. Miller.

0920

Ms. Indira Naidoo-Harris: I just want to point out that, yes, while I understand where the members opposite are coming from, I agree with my colleagues on this side. We have to be really careful what we do here, because public participation and freedom of expression should not be protected only for those with fewer resources. I think there is a more important idea and principle here that we have to look at and think about when we're looking at Bill 52.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. Mr. Miller?

Mr. Norm Miller: I just want to remind the committee that it's northern communities that made the long

trip down here to have their five minutes before the committee to make the point that this was an important motion for the committee to protect jobs in northern Ontario. In Ontario, we have the Crown Forest Sustainability Act, which—really we have the gold standard for forestry in Ontario. We have FSC-certified forests.

This change was asked for by the Federation of Northern Ontario Municipalities. They specifically said Bill 52 would be enhanced if it specified that the legislation was intended to cover individuals and groups that are voluntary in nature and have annual operating budgets below a specified threshold, perhaps \$100,000.

We heard that from other northern mayors, who went through great efforts to come to Toronto. The mayor from Atikokan, northwest of Thunder Bay, came down. We had the mayor of Cochrane come down. We had the Federation of Northern Ontario Municipalities. We had First Nations, who were quite strong in their language, supportive of changes to protect jobs in northern Ontario.

That's what this motion is about, standing up for jobs and the people of northern Ontario so they can have a livelihood and make money and support their families.

The Chair (Mr. Shafiq Qaadri): Thank you. Are there any further comments before we proceed to the vote on PC motion 2?

Mr. Norm Miller: Recorded vote.

Mr. Victor Fedeli: I have another comment.

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Fedeli?

Mr. Victor Fedeli: I just wanted to comment to Mr. Potts, when he said, "I know you want to try to make this about forestry," and not supporting forestry. Well, as Mr. Miller said, this is about forestry. This is about the north. Mr. Miller talked about the many participants who were here. Every one of them, including Chief Klyne and including the First Nations, asked for this.

This is absolutely and vitally critical to the north and to the forestry sector. A vote against this is a vote against the north and against forestry, plain and simple. That's the evidence we received from every one of the participants who came here speaking on behalf of this amendment and proposing this amendment.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Berardinetti.

Mr. Lorenzo Berardinetti: One key point: Mr. Fedeli, again, I appreciate your remarks that you've made to the Chair. My father worked 35, 40 years in a mill and he wouldn't have been able to have that work if it wasn't for the trees and the forestry that came into the mill in Scarborough way back in the 1960s and 1970s. So there's no issue there.

I just want to quote something from Mr. Pierre Sadik. He is with Ecojustice Canada. He said, "I have never seen legislation that introduces a two-tiered system for access to what is, in essence, the basic right to use all of the procedural tools of the justice system, and it's a slippery slope. What is the basis for the \$100,000 figure? This committee has heard from several SLAPP victims that the legal costs associated with defending themselves can easily run into tens of thousands of dollars per

month, or even over \$100,000 in the context of the entire suit "

If this was implemented and someone appealed or wanted to challenge it at some point in time down the road, it could cause a mess. If it goes to the Supreme Court of Canada or the Court of Appeal of Ontario, if they see that there's something in this legislation that they don't like, they may not support that section. It's just too arbitrary, the \$100,000.

The Chair (Mr. Shafiq Qaadri): Thank you. Was

there another comment on this side? Thank you.

Any further comments before the PC motion 2 recorded vote, as requested by Mr. Miller? Fair enough; we'll proceed to the vote.

Ayes

Fedeli, Norm Miller.

Nays

Berardinetti, Delaney, Martins, Naidoo-Harris, Potts.

The Chair (Mr. Shafiq Qaadri): PC motion 2 falls. We now move to PC motion 3. Mr. Miller.

Mr. Norm Miller: We'll withdraw motion 3 because it doesn't make any sense, as our motion number 1 did not pass.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller. PC motion 3 has now been withdrawn. PC motion 4

Mr. Norm Miller: I move that subsection 137.1(8) of the Courts of Justice Act, as enacted by section 3 of the bill, be struck out and the following substituted:

"Costs if motion to dismiss denied

"(8) If a judge does not dismiss a proceeding under this section, the responding party is entitled to costs on the motion on a partial indemnity basis, unless the judge determines that such an award is not appropriate in the circumstances."

Mr. Chair, this amendment would provide costs on the motion for the plaintiff on a partial indemnity scale in the instance where the case is not dismissed under section 137.1. As written, the bill currently provides full indemnity costs to a party moving a motion under section 137.1, where their motion to dismiss the proceedings is successful. This financial protection should be afforded to both the moving party and the defending party.

According to the Ontario Forest Industries Association, as the bill is currently written, the party moving a motion under section 137.1 is afforded a free bite of the apple. This means that there's no incentive against filing a motion to have the proceedings against them thrown out. The provision of partial indemnity costs may prevent the misuse of the motion to dismiss SLAPP suits.

The original report by the expert panel on SLAPP suits recommended that partial costs be considered for plaintiffs who successfully repel a dismissal under this section. Their recommendation was never realised in the

final text of Bill 52, and that's why we put this motion forward.

The Chair (Mr. Shafiq Qaadri): Comments on PC motion 4? Mr. Berardinetti.

Mr. Lorenzo Berardinetti: The cost provision in the bill was specifically designed to deter parties from initiating strategic lawsuits as well as to encourage targets of strategic lawsuits to bring motions to dismiss strategic lawsuits. This motion would allow for defendants to be further chilled from bringing forward what they believe to be meritless lawsuits because of potential cost rulings. The expert panel specifically recommended that where a defendant's motion to dismiss is unsuccessful, the plaintiff should not be entitled to costs on the motion for the reasons I just mentioned above.

The Chair (Mr. Shafiq Qaadri): Any further comments on PC motion 4? Going once.

Mr. Norm Miller: Recorded vote.

The Chair (Mr. Shafiq Qaadri): Recorded vote. We'll proceed to that vote.

Ayes

Fedeli, Norm Miller.

Nays

Berardinetti, Delaney, Martins, Naidoo-Harris, Potts.

The Chair (Mr. Shafiq Qaadri): PC motion 4 falls. PC motion 5. Mr. Fedeli.

Mr. Victor Fedeli: Chair, considering motion number

1 failed, we'll withdraw this one.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr.

Fedeli. PC motion 5 has been withdrawn. We go to the final motion of the day, I understand, PC

motion 6. Mr. Fedeli.

Mr. Victor Fedeli: I move that section 137.2 of the Courts of Justice Act, as enacted by section 3 of the bill, be amended by adding the following subsection:

"Without reasons"—

Mr. Norm Miller: "Written reasons."

Mr. Victor Fedeli: Thank you.

"Written reasons

"(6) The judge shall ensure that written reasons are made available to all parties on request within 30 days of making a decision on a motion to dismiss a proceeding under section 137.1."

The Chair (Mr. Shafiq Qaadri): Comments?

Mr. Victor Fedeli: Well, the whole concept of the bill is to make it easier for people. This will accomplish that,

The Chair (Mr. Shafiq Qaadri): Any further comments on PC motion 6? Mr. Berardinetti, and then Mr. Potts

Mr. Lorenzo Berardinetti: We will not be supporting this motion. Making written reasons mandatory may prolong the time it takes for a judge to render his or her decision. The proposed motion has the potential of undermining one of Bill 52's main goals: to establish an expedited process for dismissing abusive lawsuits.

We also need to respect the judiciary with this piece of legislation. Independent judicial decisions are an essential part of our justice system. While the amendment will not have an effect on those independent decisions, it may prolong the decision itself, undermining what this bill is trying to accomplish.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Berardinetti. To Mr. Potts.

Mr. Arthur Potts: From personal experience—my father, of course, as you know, was a Supreme Court of Ontario judge. He used to like to render a decision in the course of a hearing on an oral basis because he saw where it happened and justice delayed, he would say, would be justice denied.

So this amendment, to me, strikes that it could delay the proceedings, contrary to the expectations of the member, in restricting the opportunity for a judge to make an oral decision. If they wanted to render a written decision in a week, that would still allow it, but it would mean only a written decision. I wouldn't want to take that flexibility away from the judiciary, so we'll be voting against this amendment.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts. Mr. Singh?

Mr. Jagmeet Singh: Just to clarify, this is a question to the government on this point: The way the bill stands, the judge still has to provide reasons for the dismissal, so those reasons are still going to be available, and if there's a disagreement, there are avenues that are still available because there's an oral decision. Just because it's an oral decision that's provided doesn't in any way preclude someone from a remedy—simply because it's not a written reason. I'm just wondering if the government could respond to that.

Mr. Lorenzo Berardinetti: Again, I think that if a judge hears the motion and dismisses the SLAPP suit, that's the end of it. You know this as well as I do: Telling a judge to provide written reasons within a certain time frame—I don't think the judiciary is too comfortable with that. They can hear a motion, go in the chamber for half an hour or 10 minutes, come back out and say that the lawsuit is dismissed: "It's frivolous, it's vexatious and I'm not going to carry on any further." But to put that the decision has to be written within 30 days—the judge may hold back and decide, "I'll put my reasons in writing," and then notify you.

I think we should let the judiciary, the judges, have the freedom to just come out and say, "This is a SLAPP suit and we're going to dismiss it, and I'll write reasons within the next 10, 20 or 30 days." I think we don't want to hamper the judge and the judiciary system from doing what they do, and we want a decision as soon as possible—maybe the day of the motion.

The Chair (Mr. Shafiq Qaadri): Are there any further comments or issues before we move to the vote on PC motion 6?

Mr. Norm Miller: Recorded vote.

The Chair (Mr. Shafiq Qaadri): Recorded vote. We'll proceed to that vote.

Ayes

Fedeli, Norm Miller.

Nays

Berardinetti, Delaney, Gélinas, Martins, Naidoo-Harris, Potts.

The Chair (Mr. Shafiq Qaadri): PC motion 6 falls. Shall section 3 carry, the one we were just dealing with? Carried.

Shall sections 4, 5 and 6 carry? Carried.

Shall section 7, the short title, carry? Carried.

The title? Carried.

Shall Bill 52 carry? Carried.

Shall I report the bill, as amended, to the House? Thank you.

Thank you, colleagues. That will take place this afternoon. Are there any further comments before we close the proceedings?

Interjection.

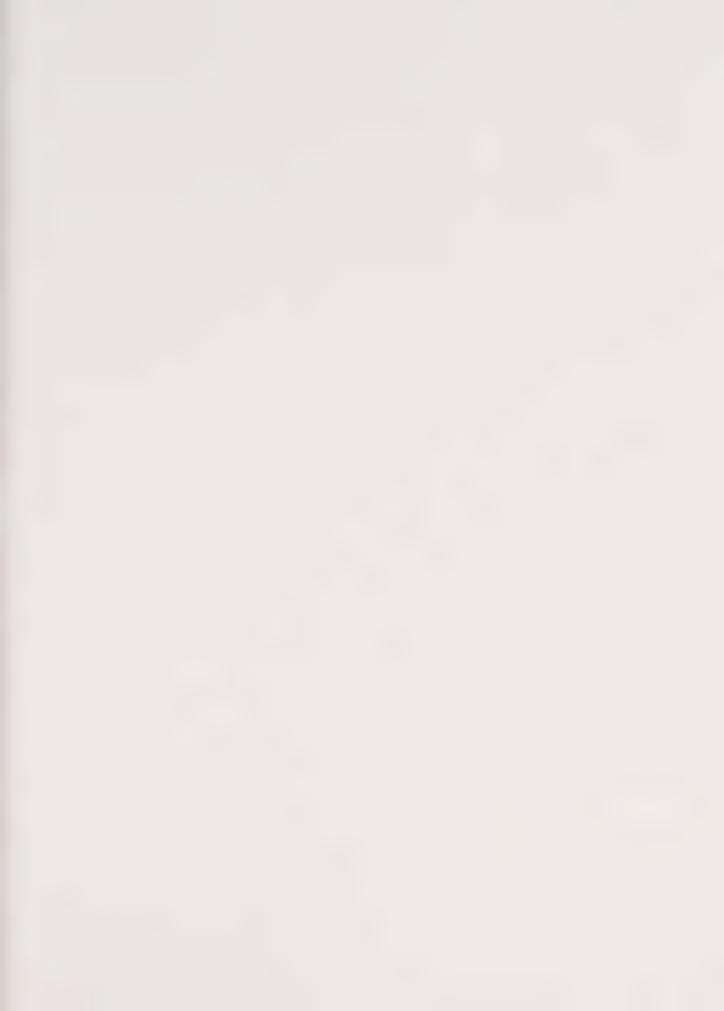
The Chair (Mr. Shafiq Qaadri): The reporting of the bill to the House.

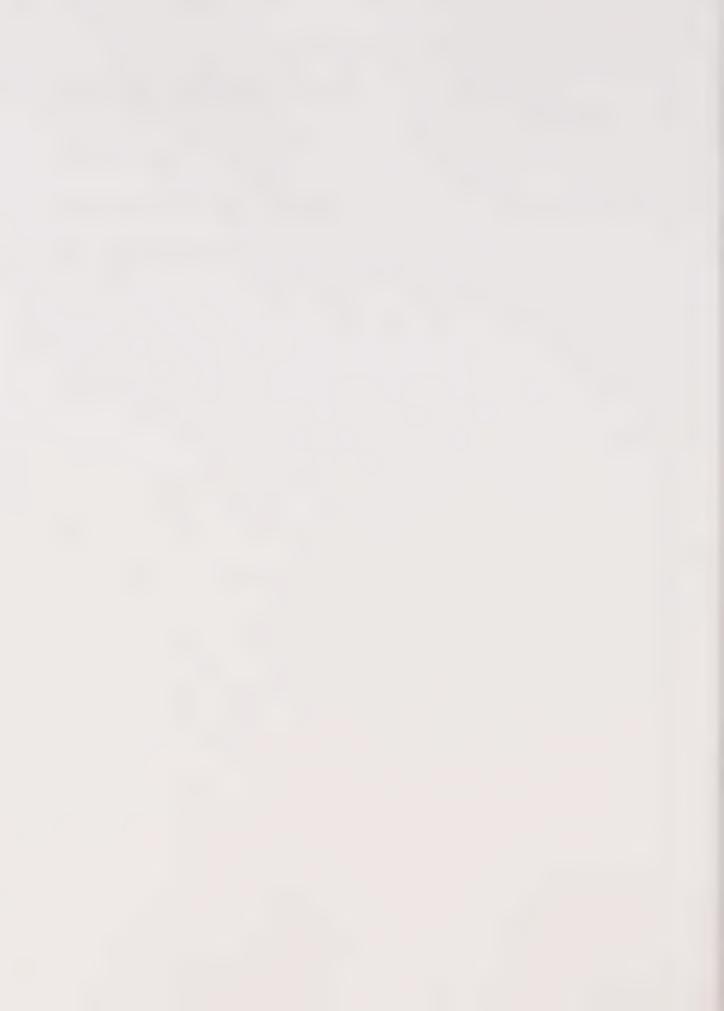
Mr. Victor Fedeli: So our committee isn't meeting this afternoon?

The Chair (Mr. Shafiq Qaadri): No.

Thank you, colleagues.

The committee adjourned at 0933.







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Thursday 5 November 2015

Standing Committee on Justice Policy

Police Record Checks Reform Act, 2015 Assemblée législative de l'Ontario

Première session, 41^e législature

Journal des débats (Hansard)

Jeudi 5 novembre 2015

Comité permanent de la justice

Loi de 2015 sur la réforme des vérifications de dossiers de police

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 5 November 2015

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 5 novembre 2015

The committee met at 1400 in committee room 1.

POLICE RECORD CHECKS REFORM ACT, 2015

LOI DE 2015 SUR LA RÉFORME DES VÉRIFICATIONS DE DOSSIERS DE POLICE

Consideration of the following bill:

Bill 113, An Act respecting police record checks / Projet de loi 113, Loi concernant les vérifications de dossiers de police.

Le Président (M. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Comme vous savez, nous sommes ici pour considérer le projet de loi 113, Loi concernant les vérifications de dossiers de police.

Welcome, colleagues. As you know, we're here to consider, through the justice policy committee of Ontario, Bill 113, An Act respecting police record checks. Welcome to all committee members. Welcome to all witnesses and participants.

Just to review the protocol: We have 15 minutes per presenter, five minutes for an opening address and then five minutes, in rotation, for questions by each party. As you know—

Interiection.

The Chair (Mr. Shafiq Qaadri): Three minutes, yes—and as you know, the timing will be enforced with military precision.

CHRISTIAN LABOUR ASSOCIATION OF CANADA

The Chair (Mr. Shafiq Qaadri): I would now invite our first presenter to please come forward: Trish Douma, regional director of the Christian Labour Association of Canada. Welcome, Ms. Douma. Please be seated. Your five-minute opening address begins now.

Ms. Trish Douma: Thank you, Mr. Chair and members of the committee, for the opportunity to address you today and to provide CLAC's perspective on Bill 113, the Police Record Checks Reform Act. My name is Trish Douma and I'm a regional director for CLAC.

For context, CLAC is the largest national independent multi-sector labour union in Canada, and one of the fastest-growing unions in the country. Founded in 1952, CLAC represents over 60,000 members nationwide, of which over 15,000 reside in Ontario. Of our Ontario workforce, approximately 8,000 work in the health care sector, where record checks are mandatory for most of our front-line workers. It is for these 8,000 health care workers that we are so pleased to be here in support of this important legislation.

To provide a bit of context, the concerns around the inconsistent processes for police record checks came to the forefront when the screening became mandatory for long-term-care workers in 2011. Increasingly since then, CLAC members have come to us with challenges regarding the disclosure of non-conviction information during police checks. These members brought to us true stories of being unfairly penalized in their professional or their personal pursuits as a result of irrelevant or non-conviction information being disclosed. In some cases, it prevented members from gaining other employment, and for others it restricted their participation in volunteer activities.

After researching the issue, we came to understand that there was no mandatory standard in place and, because of that, there was significant variation across the province on what information would be released for different police checks.

We firmly believe that police record checks serve an important role, especially when workers are interacting with potentially vulnerable populations. However, we have been advocating for a standard practice and clear guidelines on what information can be released. Our members and all individuals who require a police check deserve the certainty and peace of mind that comes with knowing what information is going to be included in their check. They also should not face the risk of having irrelevant non-conviction information released that could harm them either personally or professionally.

CLAC would like to thank Minister Naqvi, his staff and the staff at the ministry for engaging actively with us and other organizations to ensure that the standard process put in place throughout the province struck the right balance. We would also like to thank the Ontario Association of Chiefs of Police for developing the LEARN guideline that this legislation is based upon.

The concerns voiced by CLAC during the consultation process, about who to release police checks to, allowing additional criteria to be added via regulation to determine when non-conviction information can be released, and on

who should offer which levels of check throughout the province have all been addressed in the current bill.

Going forward, our primary concern will be around proper implementation. We want the new processes for record checks to take effect immediately but also recognize that certain police forces may need time to be able to prepare. Proper implementation timelines to avoid delays and backlogs are critical for our members who require police checks as a pre-condition of employment.

The second concern for us going forward will be on cost. We want to make sure that the new processes do not drive up the cost of obtaining a police record check. We have no indication that this will be the case but will be monitoring the costs on behalf of our members.

Once again, on behalf of CLAC, I would like to state our support for Bill 113, Police Record Checks Reform Act. Information is a powerful thing and must be released with parameters, especially when it has the power to do such harm.

Thank you for your time this afternoon and your attention to such an important matter.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Douma. We'll begin with questions, three minutes a side. Mr. Hillier?

Mr. Randy Hillier: Thank you for being here today. I know that you're very supportive of the legislation. I want to ask you specifically—you spoke about proper implementation—if you've looked at sections 16 and 21 and if you've made any commentary during the consultation process.

First off, section 16 doesn't identify what statistics are going to be kept by the police record check provider. Section 21 requires the minister to conduct a review of this act within five years, but there is no obligation to make that review public or to table it with the House. Does the CLAC have any concerns that those two items, 16 and 21, will not help your request for proper implementation?

Ms. Trish Douma: No, we don't have any concerns in regard to that.

Mr. Randy Hillier: So a review, as long as a review is done, and it doesn't need to be made public—you're fine with that?

Ms. Trish Douma: Yes.

Mr. Randy Hillier: All right. And you don't care about what statistics are kept. So I'm wondering: How would you define "proper implementation" if statistics and records are unknown—what is going to be kept? How are you going to be able to measure or judge if there is proper implementation?

Ms. Trish Douma: Because we will hear it directly from our members, who will be facing this every day.

Mr. Randy Hillier: So anecdotal evidence is fine for you?

Ms. Trish Douma: Correct, yes—for us and for our purposes.

Mr. Randy Hillier: Yes. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Just before I pass the floor to Ms. French of the

NDP, I'd just like to introduce the committee and welcome the next generation of parliamentarians from the Qaadri household, Shafiq Qaadri Jr., who will now retire to do homework.

Ms. French, three minutes.

Ms. Jennifer K. French: Thank you very much. Thank you for joining us today at Queen's Park. In your submission, as we've already heard, you have concerns around proper implementation, specifically timelines. What would you expect those timelines to look like?

Ms. Trish Douma: Currently timelines vary dramatically between police departments. We hear anecdotally that sometimes it's three or four days, and there are cases where we have heard that it's up to six weeks.

We understand the need for this to be done correctly, but six weeks certainly places people in a difficult position. It also places the employer in a difficult position, as they are trying to fill a need in either a hospital or in a long-term-care home. In some cases, that might have direct patient or resident impact if they can't actually get a staff person into the workplace.

Ms. Jennifer K. French: Okay; thank you. As you had mentioned earlier, you hear directly from your members on a regular basis. Can you tell us about some of the ways that your members have been disadvantaged by the disclosure of non-conviction records?

Ms. Trish Douma: Yes. Actually, unfortunately, as an advocate for justice, we hear about these things quite frequently. I think we all know that the desire to be seen as innocent until proven guilty is extremely important to people. When non-conviction and non-related information is presented at this time, during a police vulnerable sector check, it prevents people from being able to volunteer—either it's in their child's school or just elsewhere within their community—and sometimes prevents them from getting a job as well.

Ms. Jennifer K. French: Okay. Is there anything that you feel should have been included in this piece of legislation that hasn't and that you've heard from your members and would connect to this?

Ms. Trish Douma: No. Our concerns are primarily around the implementation and the timing.

Ms. Jennifer K. French: Okay, thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. The floor now passes to the government side: Mr. Balkissoon, three minutes.

Mr. Bas Balkissoon: Thank you, Mr. Chair. Thank you very much for being here and making your deputation to the committee. Let me say thank you for the compliments you paid to the ministry and the staff that you were involved with during the consultation process.

As you know, the legislation is based on the LEARN guidelines that were developed by the chiefs of police, which you're familiar with. You also know that more than 60%, I believe it is, of the police forces around Ontario are already following those guidelines, except for some minor changes in the legislation.

I hear your concern about the implementation date, but you also expressed concern that maybe some of them will do it on time or not. If I can reassure you, once the minister gets this passed and he sets the deadline in the legislation, that it has to be implemented as of this date, would you be comfortable that all forces will have to comply by that date?

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Ms. Trish Douma: I would be comfortable with that. I would just hope that they would have the resources to be able to proceed.

Mr. Bas Balkissoon: Okay. In terms of the people you represent, are they very comfortable with what the government has done with the three-process stage and that we now define what type of record you can get? I know you mentioned workers and volunteers, who are, probably, the majority who have had problems with it before. Generally, is your membership very supportive of this?

Ms. Trish Douma: Yes, they are. They feel very comfortable with the guidelines and the checks that are put in place.

Mr. Bas Balkissoon: Okay. Do you think the government should be doing anything after the legislation is implemented?

Ms. Trish Douma: In terms of what?

Mr. Bas Balkissoon: Letting your members know. How should we pass this on to the public?

Ms. Trish Douma: I think you'll have to do some public relations work to ensure that everybody is satisfied that the right balance has been struck.

Mr. Bas Balkissoon: Okay. So, generally, you're happy with what we're doing here.

Ms. Trish Douma: Yes, we are.

Mr. Bas Balkissoon: Thank you very much for taking the time to come here.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Balkissoon. Thanks to you, Ms. Douma, for your deputation on behalf of the Christian Labour Association of Canada.

ONTARIO ASSOCIATION OF CHILDREN'S AID SOCIETIES

The Chair (Mr. Shafiq Qaadri): Our next presenter, please come forward: Ms. Mary Ballantyne, CEO of the Ontario Association of Children's Aid Societies, and your colleague. I'd invite you to (a) be seated, (b) please introduce yourself, and I'll let you know when your time officially begins. Please begin.

Ms. Mary Ballantyne: Thank you very much for having us here. My name is Mary Ballantyne. I am the chief executive officer of the Ontario Association of Children's Aid Societies. It's the membership organization of 44 of the 47 children's aid societies in Ontario. With me today I have Wendy Miller, who also works at the Ontario association.

Today I'd like to speak to you about the work of children's aid societies to protect children, as mandated

by the Child and Family Services Act. In relation to Bill 113, some of the key functions of a children's aid society are to investigate allegations of abuse and neglect and also to place children with alternate caregivers such as foster parents, kinship parents or adoptive parents.

I want to start by saying that the OACAS and our members understand and respect that Bill 113 aims to protect civil liberties and to make sure people's private information is not used to discriminate against them. We also support the balance that this bill strikes between privacy and the protection of vulnerable people, such as children and seniors.

However, we do believe that it doesn't go far enough to protect children because, as it is written, it restricts the kind of information that children's aid societies use on a daily basis to make critical decisions related to child safety. We acknowledge and support that the Office of the Children's Lawyer is exempted from Bill 113; however, children's aid societies require the same or more information as the Office of the Children's Lawyer, and we don't have that same exemption.

Let me give you a couple of examples of where this is critical information and when it is needed. When a children's aid society is working with a family and it becomes apparent that the child cannot stay in their own home, they have to find an alternative caregiver for that child. Those alternative caregivers can be a relative of the child, can be a foster family or, eventually, could become an adoptive family. Right now, we do access information through a criminal reference check and a vulnerable persons check but we also are able to access other information that is very helpful in determining the safety and well-being of children.

I'd like to emphasize that coroner's inquest juries have repeatedly called for children's aid societies to have as much information, in a timely way, as possible to make the right decisions to keep children safe. For example, most recently the recommendation was made by a jury at the inquest into the death of Jeffrey Baldwin. People may remember that Jeffrey died while in the care of his grandparents. The inquest jury observed that, had the information that's currently available to CASs been available at the time that Jeffrey was placed with his grandparents, children's aid societies probably would have made a different decision.

The kind of information that we're talking about that children's aid societies would no longer have access to if Bill 113 were passed as currently drafted is information that relates to mental health and domestic violence, to the presence of restraining orders, and to youth records, particularly pertaining to young parents. OACAS is asking that you change that so that we would be able to see an amendment to Bill 113 that would permit children's aid societies to continue to receive this police record information, allowing them to make critical children's safety decisions.

This is also critical because this is a time when we're trying to find more foster and kin caregivers for children so that they can stay within families. If we are not able to

access this information, it does prevent us from finding as many potential opportunities for children.

In the spirit of the bill, we would also like you to know that children's aid societies are obligated under the Child and Family Services Act to maintain strict confidentiality of all personal information in their possession. There are explicit rules that each agency follows to make sure that the information is only used for the purpose of keeping children safe.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Mary Ballantyne: I would also ask you to consider what would happen if CASs are not able to continue to access that non-conviction information. Judges will be making decisions that may not be in the children's best interest, children under the Children's Law Reform Act will have more safety than those in the care of children's aid societies, and as a result, a child could suffer. We have seen enough evidence of that and we would ask that you consider amending the bill accordingly. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Ballantyne. To the NDP: Ms. French, three minutes.

Ms. Jennifer K. French: Thank you very much for joining us today. As you have put forward, you're requesting an exemption. I know that you spoke about it a little bit, but can you explain more in depth what that exemption would look like?

Ms. Mary Ballantyne: Similar to the Office of the Children's Lawyer, it would exempt children's aid societies from being restricted in the information that they're currently getting, which this bill would restrict them from being able to access.

Ms. Jennifer K. French: Okay. Just so that we're clear, what would that look like in practice? That's currently what's happening—

Ms. Mary Ballantyne: Do you want to speak to that, Wendy?

Ms. Wendy Miller: In practice, in terms of what the exemptions would look like, or in practice in terms of restricting that information to the CASs?

The Chair (Mr. Shafiq Qaadri): Sorry, could you just introduce yourself for Hansard?

Ms. Wendy Miller: Forgive me. Wendy Miller, senior program analyst, OACAS.

Ms. Jennifer K. French: Sorry, just so that I'm clear, the exemption would essentially allow you to continue doing what it is that you're currently doing. If you could better help us explain what that is currently.

Ms. Mary Ballantyne: What we're currently doing?

Ms. Wendy Miller: Yes.

Ms. Mary Ballantyne: When a children's aid society is assessing a foster parent or perhaps when a grand-parent comes forward and says, "I would like to take care of my grandchild," the children's aid society would access, through the police, the information around criminal conviction, but also would have access to this other information—whether there have been police calls to the home, whether there are restraining orders, those kinds of

things. That does help with determining the stability of the parent.

Ms. Jennifer K. French: Thank you.

Also, in your submission here, you suggested that it's an oversight in the drafting of the bill. Were you involved in a consultation process? Is this something that had already come up?

Ms. Mary Ballantyne: No. We were missed in the consultation process.

Ms. Jennifer K. French: So your hope, then, in going forward is that you can be involved in that process?

Ms. Mary Ballantyne: Yes. Yes, please. We do see that these children and the decisions that children's aid societies are making are similar to what the Office of the Children's Lawyer would be needing to make, but unfortunately, we weren't consulted when the bill was drafted.

Ms. Jennifer K. French: Do you imagine that there would be anyone else who would be seeking a similar exemption for a similar reason?

Ms. Mary Ballantyne: In addition to the children's aid societies?

Ms. Jennifer K. French: That might also have been missed in consultations.

Ms. Mary Ballantyne: I don't think so—not on such a grand scheme, anyway.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. To the governing side: Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you for being here. I just want to clarify that too. You're actually saying to us that if you want to check next of kin, grandparents or a foster family, the vulnerable record check that is in this legislation is inadequate for you?

Ms. Mary Ballantyne: Yes.

Mr. Bas Balkissoon: Can you tell me where the shortfall is, so that I can make sure that I understand?

Ms. Wendy Miller: I can speak to that. I think it's in the schedule to the act itself, to the statute. It describes the kinds of information that are currently available through various checks: the criminal, non-criminal and vulnerable sector—

Mr. Bas Balkissoon: No, but if you apply for a vulnerable check for a foster family or a next of kin, what information will be missing that you absolutely need?

Ms. Wendy Miller: Information related to police contacts related to domestic violence, restraining orders, non-conviction information that gives important, critical information that is used by the clinicians at a CAS who are making decisions about children's safety. They take that information, such as information related to domestic violence calls—maybe there was never a conviction, but it suggests potential information that impacts whether that child would be safe going to live with that individual.

Mr. Bas Balkissoon: My understanding is you had a meeting with the staff at the ministry just recently.

Ms. Wendy Miller: Yes, we did.

Mr. Bas Balkissoon: You've raised this issue with them?

Ms. Wendy Miller: We have, and with our own ministry as well.

Mr. Bas Balkissoon: Can you share with the committee what they relayed to you in regard to exactly what's missing?

Ms. Wendy Miller: I can say that the legislation that we are operating under, the Child and Family Services Act, and its regulations reference criminal records checks. All the individual information that CASs are currently able to access that would be curtailed by this bill, they are accessing as a result of individual protocols with police detachments across the province. So the very attempt to create the legislative framework and consistency that this bill aims for is also tied up in how CASs currently receive this information. What's clear is that CASs depend on the information they are getting in order to fulfill their statutory obligation. We've made that very clear.

We understand that an amendment to Bill 113 may also need to be accompanied by complementary changes to regulations, and those are important discussions we hope to have going towards the clause-by-clause discussions.

Mr. Bas Balkissoon: Okay. Thank you very much.
The Chair (Mr. Shafiq Qaadri): To the PC side: Mr.
Hillier?

Mr. Randy Hillier: Thank you very much for being here. It is indeed unfortunate that you weren't part of the consultation process in the development of the legislation, unlike the previous presenter.

It is also unfortunate that we only have three minutes to speak to a very important bill that could have significant ramifications, which you've just raised, of compromising—or maybe even being in a prejudicial manner—your ability to scrutinize who will take care of vulnerable children.

You did mention that you had consultations with the ministry subsequent to the creation of the legislation. Have you proposed specific amendments to the ministry, and have you shared those with the committee, the specific wording of those proposed amendments?

Ms. Wendy Miller: We have. We've been in touch with the staff of the caucuses. We've been in touch with our ministry closely. As you've mentioned, we have spoken to the drafting ministry. What we have understood is that we've proposed language but the language may also require some further finessing in terms of the regulations.

We also understand that our ministry, the Ministry of Children and Youth Services, was invited to provide input to a regulatory exemption, but our members in the OACAS feel strongly that the exemption that we have for our sector should be in statute—

Mr. Randy Hillier: Yes.

Ms. Wendy Miller: —not only in regulation.

Mr. Randy Hillier: We know that with the regulations we give broad powers to the Lieutenant

Governor in Council, the cabinet, and also to the minister, to do as they may at any time in the future on a number of key things.

Number one is exempting any person or class of persons from any provision of this act and attaching conditions to that exemption. So there is the authority granted to cabinet; however, that authority, if it was to be exercised, would never be done in a public fashion. It's not done with open debate and being able to scrutinize it.

I think it is important, with the matters that you've raised, for the assembly to consider those and see how this may be a negative impact and work at cross purposes to what we're actually trying to do here.

Are you also concerned at all about just the increasing use of background checks in your interactions with foster parents, with the people that you deal with; if this legislation is going to exacerbate that and make it even more cumbersome or more widespread, and how that might affect the operations of the CAS?

The Chair (Mr. Shafiq Qaadri): Sorry, Mr. Hillier. The question will have to remain rhetorical. Time has now expired.

I'd like to thank you, Ms. Ballantyne, and your colleague on behalf of the Ontario Association of Children's Aid Societies.

JOHN HOWARD SOCIETY OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to please come forward: Ms. Jacqueline Tasca of the John Howard Society. Welcome, Ms. Tasca. Your time begins now.

Ms. Jacqueline Tasca: Thank you, and thank you for the opportunity to speak today.

For years in Ontario, people have been punished for crimes they have not committed. Routinely through police record checks, police have disclosed information about non-criminal and non-conviction interactions with Ontarians.

This is not a harmless practice. It strikes at the heart of our cherished legal presumption of innocence. It has also destroyed the hopes of countless people for jobs, housing, volunteering and education.

The scope and impact of this issue is tremendous. Thousands of Ontarians have records of non-conviction and many don't even know it. In recent years, the demand for record checks during hiring or screening has risen dramatically across sectors. People with non-conviction police records currently have no human rights protections in the hiring or employment context in Ontario.

The John Howard Society of Ontario has researched and documented the harm this practice has inflicted on so many vulnerable and often voiceless individuals. Most recently, we highlighted some of these findings in our report entitled Help Wanted. Non-conviction records can impact anyone. However, our research shows that certain populations are disproportionately impacted by both policing and therefore police records. These populations

overlap significantly with communities that already experience tremendous discrimination and marginalization. This includes racialized populations and populations with mental health and addiction issues.

We've also searched the academic literature on record checks to identify if there is any compelling evidence to support the use of non-conviction records to screen prospective employees or volunteers. We found no evidence to suggest a link between past non-conviction records and future criminal behaviour, particularly in the workplace.

In light of the tremendous societal harm associated with the continued disclosure of non-conviction records and the absence of compelling evidence for their use as a screening tool at the employment stage, we called for legislation. I am here today to express the John Howard Society of Ontario's support for this bill.

To be clear, Bill 113 regulates what is disclosed on police record checks. There are, in our view, some outstanding issues related to record checks, such as the lack of human rights protections in Ontario for people with police records, as well as the employer demand side of the issue. But Bill 113 addresses a critical piece of this issue and, if implemented, will have significant and positive impacts.

I want to draw your attention to what we view as four key aspects of police record checks that would be regulated and standardized under Bill 113.

The first is that Bill 113 brings much-needed clarity and consistency around the language used to describe police record checks, in establishing three key levels of record check. Presently, police services have significant discretion around what types of record check products they offer, what they call these record check products and what is disclosed at these different levels. This is confusing for both those being subject to record checks as well as those requesting and interpreting the results of these record checks.

The second thing this bill does is it standardizes the type of information that can be disclosed at the different levels of check. The need for transparency, consistency and fairness around disclosure is really critical. Crucially, Bill 113 will completely eliminate the disclosure of non-criminal police contacts. These are instances when people were never even charged or alleged to have committed anything criminal at all.

In addition, Bill 113 will greatly restrict the disclosure of non-conviction dispositions. These are the instances where individuals were charged with a criminal offence but ultimately not found guilty. Non-conviction dispositions under Bill 113 will only be disclosed in rare and exceptional circumstances—only at the vulnerable sector check level and only if they meet strict criteria.

We support this disclosure framework and the details of the assessment process are partially outlined in Bill 113, but we understand—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Jacqueline Tasca: Sorry?

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Jacqueline Tasca: Thank you—we understand that they will be further refined in regulation. I should just say that we strongly endorse the 2014 LEARN guideline assessment tool and hope to see some of that replicated in the regulation.

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The third thing that Bill 113 does is it places consent back into the hands of the individual who is subject to the record check.

Fourth, it establishes a reconsideration process that must be mandatory to police services.

I'll stop there. Thank you for your time. I welcome any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Tasca. To the governing side: Mr. Balkissoon.

Mr. Bas Balkissoon: Let me say thank you for being here and presenting to us.

You've made it very clear that you're supportive of the legislation. I understand that your group was one of the major players in the consultation with the chiefs of police in developing the LEARN guideline, so I'm assuming your organization is quite happy with the LEARN guideline. Does the bill completely reflect what's in that guideline to your satisfaction?

Ms. Jacqueline Tasca: Yes. Overall, I would say the bill does a very good job of capturing what was in the guideline and what we really liked about the guideline. There are a couple of areas, like I mentioned—the exceptional disclosure assessment, where part of it still has to be defined in regulation; namely, perhaps, a specific list of offences that can focus the exceptional disclosure assessment process. But outside of that, we're quite happy with it.

Mr. Bas Balkissoon: You made a comment and I slightly missed the beginning part. You made a comment something to the effect of "employer demand side"?

Ms. Jacqueline Tasca: Yes.

Mr. Bas Balkissoon: Can you explain that or expand on it so I understand?

Ms. Jacqueline Tasca: Sure. This bill deals with what is being printed, basically, on police record checks: What is the type of information that's being sent? It does not at all deal with the fact that with employers and all sorts of industries, the demand for record checks has been going through the roof. It will not curtail at all, necessarily, the level of demand for record check products. That's what I mean. We have a number of recommendations around that.

Mr. Bas Balkissoon: I guess you don't feel comfortable that once employers know there are three levels of checks and what they're looking for they will not get—which is the vulnerable record check, unless they're being employed in that sector of society. You don't think that would lower the number of requests?

Ms. Jacqueline Tasca: No, I don't think so.

Mr. Bas Balkissoon: A bank employee having to get a records check, and they only get a criminal record check, and they know that's all they'll get—I don't see that it'll drive up the volume—

Ms. Jacqueline Tasca: I don't think it will have an impact on the volume.

Mr. Bas Balkissoon: I would have thought it would. Ms. Jacqueline Tasca: Well, I'd like to be wrong.

Mr. Bas Balkissoon: Your organization is 100% supportive of this because you participated in the process all the way through, and we thank you for that support.

The Chair (Mr. Shafiq Qaadri): To the PC side: Mr. Hillier.

Mr. Randy Hillier: I want to just get into this expanding role of background checks, and if there was any discussion by your organization with the government in development of this. We have seen exponential growth in the demand for record checks over the years. Nobody will deny that the growth element is significant, and I don't see anything on the horizon that is going to abate that exponential growth. Were there any discussions in the development of this bill, from the John Howard Society, about ways and means that the government may incorporate elements into this legislation that would abate that growth? As you said earlier, there is an absence of evidence on the release of non-conviction records for employment and for many other activities.

Ms. Jacqueline Tasca: Certainly, we raised some of these concerns to the government when meeting with them initially about this issue.

One of the things we recommended and that we think would really serve to curb demand, or at least make demand a little bit more thoughtful around record checks on the employer side, is looking at a change to the Human Rights Code and offering more protections for people with police records in Ontario, because that will force employers to have to think a little bit more critically about matching the request for a criminal record check to a bona fide occupational job requirement. That was one of the suggestions we put forward.

The other thing is public education. There needs to be a little bit more public education around when it's appropriate to ask for what level of check. That's something my organization has been doing, along with the Canadian Civil Liberties Association.

Mr. Randy Hillier: What was the response to that first element from the John Howard Society, to abate this growth—your recommendation to the government?

Ms. Jacqueline Tasca: So far, we haven't had a response directly, but that's because we haven't approached the Ministry of the Attorney General. We made the recommendation broadly and we've approached the Ontario Human Rights Commission on that. It's an ongoing piece, but we saw it as falling a little bit outside of the scope of this bill. We continue to pursue it.

Mr. Randy Hillier: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. To Ms. French of the NDP.

Ms. Jennifer K. French: Thank you very much for joining us today. I appreciated your submission.

As you had said, this is not a harmless practice and, of course, you would hear from many and varied people across the society.

One of the pieces that I don't think you had a chance to talk about was youth records. Is that something you wanted to take the opportunity to share?

Ms. Jacqueline Tasca: Sure. Our organization has had some concerns about the disclosure of youth records, as it stands on record checks in Ontario. The 2014 LEARN guidelines still allow for the disclosure of some youth findings of guilt. The legislation, Bill 113, emulates that in the schedule. We have some concerns around the disclosure of youth records generally, in terms of how consistent that is with the spirit of the Youth Criminal Justice Act, which offers some pretty strong safeguards around the disclosure of youth records.

From what we understand, in Bill 113, it seems to us that the government has done a good job at coming up with the solution to that issue, in that, if we understand the legislation correctly, when a young person—they may or may not be an adult at the time of the record check—goes for a record check, there will be two sheets. There will be a detachable sheet where the first sheet gives you the outcome of the record check except for the youth records and the second sheet will contain the youth records that are only accessible, perhaps, to the youth. The youth will be able to detach that and only hand over the results of the front part of the record check to their employers, who might not be able legally to access the youth part, which is something that's been going on frequently.

Ms. Jennifer K. French: Thank you. Just in the interest of time—you had also mentioned that a positive about this is consent back in the hands of the individual. Actually, no, I'm not going to give you a chance to talk about that; I had another question.

As you said, in rare and exceptional circumstances, you support the disclosure framework and that you're watching to see that it will be further refined in regulation. Do you have any suggestions or thoughts on the discretion to disclose, on what that should look like and who should have that power?

Ms. Jacqueline Tasca: In the LEARN guidelines, they specify existing lists of offences that are to be contemplated for disclosure—

Ms. Jennifer K. French: Who should-

Ms. Jacqueline Tasca: But who should be making that? In the guidelines, they also recommend escalating it to beyond the records staff, escalating it to either a manager or some more senior staff in order to make that decision. I think that sort of process is something that we would like to see emulated in regulation.

Ms. Jennifer K. French: Okay. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. French, and thanks to you, Ms. Tasca, for your deputation on behalf of the John Howard Society of Ontario.

ONTARIO PEER DEVELOPMENT INITIATIVE

The Chair (Mr. Shafiq Qaadri): Our next presenters, please come forward: Ms. Sherman and Mr. Cheng of the Ontario Peer Development Initiative. Welcome. Please be seated, and your time officially begins now.

Ms. Deborrah Sherman: Good afternoon. I want to thank you for this opportunity to present to the standing justice committee, Mr. Chairman.

My name is Deborrah Sherman, and I am the executive director of the Ontario Peer Development Initiative. With me today is our policy analyst, Raymond Cheng.

OPDI is the provincial umbrella of some 52 consumersurvivor initiatives and peer support organizations in Ontario. We are funded by the Ministry of Health to bring the voice of these groups, which are run by and for people with lived experience of mental health conditions and addictions, to provincial planning and policy processes. In addition, we created and provide a basic training program for peer supporters. We are pleased to share with you the perspective of people with lived experience of mental health and addictions at today's hearing.

To give some anecdotal background: In the spring of 2000, shortly after becoming the executive director of one of OPDI's member organizations, I attended a workshop on public sector screening that was provided to non-profits by my city's police service. We were taught that the basic cost of a volunteer screening was \$40, that a quicker turnaround for paid staff could be had for more money and we were told how to interpret the information we would be seeing on returned records.

The facilitator that day also took the opportunity to point out to the roomful of volunteer and human resources directors that, should we ever see the phrase "taken to hospital" on these reports, we could take that as a sort of code that the person has a mental illness, and we might want to think twice about them.

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I very quickly learned that very few of the marginalized people who made up our membership could afford the fee, and that every dollar spent by the program on screening board members and staff was a dollar taken out of our programming. I quickly saw that I was receiving reports back that not only listed every time someone was taken to hospital or in some cases charged with some misdemeanour or crime, but I was even seeing lists of how many times they had called police to report something. Every single contact with police was showing up on these reports.

I quickly learned from the members and the staff that the cost and the indiscriminate information-sharing was standing in the way of their efforts to get jobs, to get vocational training, to get volunteer positions and sometimes even to get social housing. Rather than use these reports to identify how to include people, as my program did, many local organizations were using them

as reasons not to include some people at all. Then over time, I became quite appalled to learn that somehow, some people's information was finding its way to the US border, and people had family vacations or business trips ruined when they were turned back from the border because of past suicide attempts.

After 15 years and a whole lot of advocacy by the Police Records Check Coalition and a number of other groups that we are in touch with, we're pleased to finally have this legislation. We're impressed with the breadth and the grounded understanding of the impact that each of the three political parties showed in the second reading of Bill 113. That being said, though, we would like to offer these four observations on improving the Police Record Checks Reform Act of 2015.

First of all, the bill spells out that there are three kinds of police records checks. It is possible that an individual might be asked for different reports as a condition of employment, or for volunteering or for vocational placement. The costs of such checks can represent a financial burden on those with limited incomes. It's not clear, but quite possible, that repeat annual screenings may be required by some organizations. Such fees represent a significant economic barrier to full participation in society. At present, the bill is silent on this point.

Secondly, consumer-survivor initiatives may have to adopt police records checks for all staff and volunteers if this broad standard is adopted provincially and becomes required by insurers. If individuals cannot afford these costs, the organizations themselves may have to absorb them as part of their staffing expenses. Non-profits, and especially peer support organizations, have very limited staffing budgets, and they'll find themselves forced to choose between doing due diligence and doing programming for their members and clientele.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Deborrah Sherman: The act gives broad definition to police forces on how to word the results of their checks. The legislation allows the applicant to review unjust non-conviction information. We believe the bill should lay out a provincial standard for police forces by spelling out a common set of working forms using plain language so that the results of police record checks can be applied consistently and unambiguously in Ontario. This would minimize discrepancies in reporting and resultant appeals of inappropriate disclosures.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sherman. To Mr. Hillier of the PC side.

Mr. Randy Hillier: Thank you very much for being here. Again, it's unfortunate that the government has only allocated three minutes for discussion on this important bill, which I support as well. However, I do think there are some elements, such as ones you've pointed out.

I'm wondering, during your discussions with government, if you were part of that consultation process, if you brought up these points, number one and two; we didn't get to number three within your three-minute time

frame. These can be significant barriers. We have seen a continued growth in reliance on the use of background checks.

Have you put forward any suggestions that would have mitigated those concerns that you've identified?

Ms. Deborrah Sherman: We've not been consulted by the government directly on this. We have been a corresponding member of the Police Records Check Coalition. I believe Raymond attended a couple of their meetings.

I think what is going to ultimately happen and what would be a good idea to put in place in the first place is—perhaps a centralized repository or a centralized process for getting at this information would make a lot of sense. I predict that like every other piece of statistical gathering we have to do as programs of the mental health ministry, it will probably end up becoming quite evident that this needs to happen in order to get consistent information and to have things applied consistently and priced consistently, and remove that burden from the police services.

Mr. Randy Hillier: But you do have a concern that this increasing reliance on it will have a detrimental impact on your operations.

Ms. Deborrah Sherman: Yes.

Mr. Randy Hillier: And that there aren't any safeguards or mitigating clauses in the legislation to help deal with that challenge.

Ms. Deborrah Sherman: Correct. Mr. Randy Hillier: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. To Ms. French of the NDP.

Ms. Jennifer K. French: Thank you for joining us today. Unfortunately, as we saw, you ran out of time midway through your third point about a common set of working forms using plain language, so that, as you have said here, the results of police record checks can be applied consistently and unambiguously in Ontario. If you want to take a moment and further expand on that, and then I want to ask you about your fourth point we haven't heard about.

Ms. Deborrah Sherman: Okay. Certainly people are very mobile. What happens in one city with one police force could be very different from what gets reported by a police force from another city. For our way of thinking, it makes a whole lot of sense to provide them with a standard set of forms that they're asked to use so that there's much more consistency, so that everybody knows what to expect and so that the kind of language that's used in the reporting is also consistent and far less discriminatory than it is today, or has been to now.

Ms. Jennifer K. French: Thank you. One of the points that you had the chance to make is that people, as they're trying to go on vacation or take business trips, have run into surprises at the border, with some of their mental health history becoming, essentially, public and affecting their plans. So your fourth point here, about non-criminal mental health information remaining in the

hands of the FBI and US border patrols: What would you like to say on that?

Ms. Deborrah Sherman: I know several people that this has happened to, and the effects are really quite devastating. You're all packed up, you're with your family, you're heading for Florida, and suddenly there's a decision that has been made: Are we going to leave our family member home and go without them, or are we all going to turn back?

It has a huge impact on people. It definitely affects their self-esteem, how they view themselves. I've known people that it has happened to, and it has put them back into a bad state of mind, to be put down in that manner. Certainly, it's an unexpected thing. You never know when it's going to happen, and it's because there is something in that record that says they, once upon a time, made a suicide attempt. That's personal health information; it has no place at the US border.

Ms. Jennifer K. French: Would you say anything to the government on that subject—a recommendation, perhaps?

Ms. Deborrah Sherman: We certainly hope that this legislation will put a stop to it. Retroactively, though, what happens? We know that you can't go and say, "Give us back all the information." But it's good in the sense that hopefully this will be stopped.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. To the governing side, to Mr. Potts.

Mr. Arthur Potts: Yes. Ms. Sherman, and thank you very much for being here. Very interesting. I think you have laid out very clearly one of the reasons why this bill was necessary, particularly in what you were seeing with records and how that impacts people's capacity not just to volunteer but for people to work.

Are you satisfied that we are getting to that piece of the puzzle, in that all those background non-conviction issues, all those issues of police stops, aren't going to be divulged in a simple employment application when they

want a criminal background check?

Ms. Deborrah Sherman: I do feel that you are getting towards resolving a lot of the issues that happen. I would point out, however, a little bit of concern about the fact that in our field every screening would almost be a vulnerable sector screening, as opposed to the other two types, and so the more stringent pieces may apply. To apply those pieces to people with mental health issues who are not looking to adopt children, necessarily, or become foster parents—I certainly see the need for extra screening in those types of settings, but most of the people who would be wanting to volunteer or get jobs with our organizations would be interested in doing peer support, because that's what we do.

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Mr. Arthur Potts: So you would describe the people you're servicing through your organization as vulnerable people—

Ms. Deborrah Sherman: Yes, quite a few of them.

Mr. Arthur Potts: —in the sense that children would be vulnerable or seniors would be vulnerable.

Ms. Deborrah Sherman: Yes, similarly.

Mr. Arthur Potts: And I'm not sure; I guess that has to be spelled out in the regulations. I know that staff is here taking note about how that would apply in the circumstance.

You talk about the three levels of checks. You give the impression that that's three different applications, when in fact it's just different levels, so some are available in some and not in others. I just want to clarify that you know that's not going to be three separate applications.

Ms. Deborrah Sherman: Yes. It's different levels of scrutiny, correct?

Mr. Arthur Potts: Yes.

Ms. Deborrah Sherman: But in our sector, a lot of people don't get full-time work, they get part-time work, so every employer you go to wants a screening. Hopefully, you're able to provide one screening. Some of them demand their own. It's a question of what is being asked for and being careful around what is being asked for, and not applying the same levels of scrutiny to a person several times.

Mr. Arthur Potts: I'm going to let the PA have a little shot at it.

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon, 20 seconds.

Mr. Bas Balkissoon: I'm trying to clarify, because I know who your clients are. They're clients with mental health issues—but that's your client. If they are looking for a job, unless that employer is involved with vulnerable people, the employer cannot request a vulnerable check. Are you aware of that?

Ms. Deborrah Sherman: Correct.

Mr. Bas Balkissoon: So that will help your client.

Ms. Deborrah Sherman: Yes.

Mr. Bas Balkissoon: Okay. Are you aware that the issue you mentioned about crossing—

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Sherman and Mr. Cheng, for your deputation on behalf of the Ontario Peer Development Initiative.

CANADIAN CIVIL LIBERTIES ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I invite our next presenter to please come forward: from the Canadian Civil Liberties Association, Laura Berger. Welcome. You've seen the drill: five minutes and then questions by rotation. Is it pronounced "Burger" or "Berger"?

Ms. Laura Berger: I'm from Quebec, so I answer to both.

Le Président (M. Shafiq Qaadri): Voilà. Vos cinq minutes commencent maintenant.

Ms. Laura Berger: Merci and thank you. I would like to thank the committee for giving the Canadian Civil Liberties Association the opportunity to speak to this important bill.

As you may know, the CCLA is an independent, non-profit, non-governmental organization. For over 50 years, our work has brought us before legislative bodies, but

also before courtrooms and in classrooms all across Canada. We work to promote and protect the fundamental rights and freedoms of all Canadians.

Over the past 10 years, we have worked extensively on the issue of police record checks. We have intervened in court cases, published two major reports, and delivered dozens of public education workshops.

We have also provided legal information, and occasionally advocacy support, to over 100 Canadians who have contacted our offices with concerns about police record checks. I personally receive calls and emails every month from Canadians who are worried about the impact that a youth finding of guilt, or old criminal charges, or even a past suicide attempt could have on their lives and their livelihoods.

Based on all this experience and expertise, we welcome the introduction of the Police Record Checks Reform Act. In my time before the committee, I wish to speak about Bill 113 through the lens of individual rights.

We believe this legislation is a necessary first step in combatting unnecessary and overly invasive police record checks. It is necessary if we want to be a society where the presumption of innocence truly means something. Indeed, the bill responds to the very first recommendation in our most recent report on this topic, which urged government to legislatively prohibit the disclosure of non-conviction records on criminal record and police information checks.

I would like to highlight a few features of the bill.

First, as we know, the bill will end the disclosure of information about police contact that never resulted in criminal charges. It also strictly limits the disclosure of information about charges that never led to convictions: charges that were withdrawn, that were stayed, or that resulted in an acquittal.

The CCLA supports a strong presumption against disclosing any non-conviction information on police record checks. In our view, individuals who have never been found guilty of an offence are entitled to benefit from the presumption of innocence that underpins our justice system.

As you heard from my colleague from the John Howard Society, our review of the social science evidence shows that there is no evidence suggesting that non-conviction information is helpful in predicting the risk that a person may offend in the future, particularly not in the workplace.

Now, of course, under Bill 113, some non-conviction information may be disclosed in a narrow range of cases. As you know, there is an exceptional disclosure test in the 2014 LEARN guideline. The intent behind this exception was very specific. Despite the lack of social science evidence demonstrating the utility of non-conviction records as screening tools, there do remain strong fears in the community about child sexual predation and fraud schemes targeting the elderly. The exceptional disclosure assessment in the LEARN guideline was intended to limit the scope of discretion that police forces have in disclosing non-conviction

information, but to allow a narrow and limited valve for some of that information to be disclosed in appropriate cases where there is a pattern of sexual or financial predation.

There are two features in the LEARN guideline that we hope will be reflected in the regulations envisioned in Bill 113. Again, my colleague from the John Howard Society mentioned these. The first is separating the exceptional disclosure assessment from the routine processing of record checks. The decision to release non-conviction information should not be made by the member or the clerk processing the record check. It should be elevated to a supervisor who has training in assessing exceptional disclosure cases.

Second, we support confining the scope of disclosure to specific offences. In the LEARN guideline, we have several schedules—

Le Président (M. Shafiq Qaadri): Trente secondes.

Ms. Laura Berger: Thank you. I do want to mention one final outstanding issue because I think this has been very common in debate before the House. There is an outstanding issue around travel to the US and elsewhere. It is our understanding that Bill 113 does not resolve the issue that Ontarians with police records, including records that reveal a person's mental health history, may face barriers in travelling to the United States. This is because the bill does not currently address—

Le Président (M. Shafiq Qaadri): Merci, madame Berger, pour vos remarques introductoires. Maintenant, je passe la parole à M^{me} French du NPD.

Ms. Jennifer K. French: Merci. If you would like to continue with that thought, please take the opportunity.

Ms. Laura Berger: I would just like to say that the bill doesn't address information-sharing between law enforcement agencies. It's our understanding that US border authorities are able to query the Canadian Police Information Centre, CPIC, and they have access to some records in the SIP—special interest police—repository or section at CPIC. It's my understanding that that access is not affected by this bill, so even after the passage of Bill 113, there will be a need to work with policing partners and in particular privacy advocates, like the Information and Privacy Commissioner, to find rights-respecting solutions.

Ms. Jennifer K. French: Thank you very much. One of the pieces that you had mentioned, the scope of discretion—you and your colleague before had referred to management or the clerk or member responsible for keeping the records being able to choose to disclose. Can you talk a little bit more about that piece of it? When you say "manager," is that from within that community or outside?

Ms. Laura Berger: Currently, under the LEARN guideline, the idea is that a supervisor within the police service is making that exceptional disclosure assessment, as opposed to the member who is routinely processing the checks. I think this was a solution aimed at trying to ensure thoughtful decision-making and thoughtful

exercises of discretion within the current format, which is that police services are processing record checks.

As you are perhaps aware, the CCLA, along with other organizations, has recommended exploring a model similar to BC's for vulnerable sector checks, where disclosure decisions would be made by a centralized screening body that has expertise in risk assessment and would essentially give a red light/green light when someone has made an application for a vulnerable sector check. The idea behind that is that it puts decision-making in the hands of a specialized body that has expertise in risk assessment, as opposed to having that level of discretion in the hands of police services.

But we are satisfied that the LEARN guideline and consequently the bill does as much as much as possible within the current framework to try to rein in the discretion wielded by police services, which has, up to now, resulted in inconsistent decision-making and inconsistent results across the province.

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Ms. Jennifer K. French: Okay.

The Chair (Mr. Shafiq Qaadri): Eight seconds.

Ms. Jennifer K. French: Thank you very much.

Ms. Laura Berger: Thank you.

The Chair (Mr. Shafiq Qaadri): Well-used, Ms. French.

To the government side: Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Ms. Berger, thank you so much for coming in today and sharing your thoughts about this very important bill with us.

Your organization is well-known for its monitoring of the legal and policy frameworks that govern policing, and the administration of justice in Canada. What you really try to do is ensure that we are being respectful of civil liberties and the Charter of Rights. I'm really interested in finding out: How do you feel this legislation, if passed, will respect civil liberties and the Charter of Rights?

Ms. Laura Berger: There are some very fundamental values in our charter. One of them is the right to privacy and another one is the presumption of innocence. These are fundamental ideas in our justice system. We do have a system where people who have not been convicted or found guilty of an offence in a court of law can nevertheless suffer the consequences.

Another important charter value is the value of equality. As you've heard from people giving deputations before me, in the past we've seen people with mental health issues and members of marginalized communities facing incredible stigma and barriers because of the current system and the lack of legislation in this area.

We are very excited to see this move forward. There are outstanding issues around privacy protection, human rights protection and so on that we hope Ontario will continue to tackle.

Ms. Indira Naidoo-Harris: You touched earlier on the idea that the collection of this data doesn't really assist in terms of predicting behaviour. Can you tell me a little bit more about that? Ms. Laura Berger: Sure. When we looked at a review of the literature, we found that if you look at actual criminal convictions, the evidence suggests that there is not a strong correlation between record of conviction and future workplace offences. There is absolutely no evidence that a non-conviction record—which could be anything from a spurious charge that was quickly dropped, or allegations and investigations that never led to charges. There is absolutely no evidence that people with those sorts of records are at a greater risk of offending in the future than the general population.

When we do public education campaigns for employers or non-profits, we try to emphasize this: It's a stereotype and it's a faulty assumption to believe that someone with a police record is going to be a worse volunteer or is going to pose a risk to clients or organizational assets. That's why we're very—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. To the PC side: Mr. Hillier.

Mr. Randy Hillier: I guess we'll have to temper my desire for wide-ranging discussion on this piece of legislation to meet the three-minute time allocation the government has permitted.

I would like to ask you, specifically under section 19 of the bill, if it gives the Canadian Civil Liberties any—if you're aware of this and what you might have to say: "A prosecution shall not be commenced under this section without the minister's consent."

Of course, this bill provides a \$5,000 offence for contravention of the release of information. Have you ever seen a bill or a law where prosecution requires the consent of the minister to go ahead?

Ms. Laura Berger: It's my understanding that other privacy statutes in Ontario, including MFIPPA, FIPPA and PHIPA, also require ministerial consent for certain prosecutions.

Mr. Randy Hillier: FIPPA requires ministerial consent?

Ms. Laura Berger: For certain offences under those privacy statutes.

Mr. Randy Hillier: So under this statute, all offences require ministerial permission. Do you have any concerns about that, or any comment that you would like to share with the committee?

Ms. Laura Berger: I think that the enforcement of privacy statutes is a large issue and sort of a big can of worms, so to speak. I'm not best-placed to assess, for instance, under MFIPPA, FIPPA and PHIPA, what the enforcement challenges have been. That might be worth speaking with the Information and Privacy Commissioner—

Mr. Randy Hillier: The context of this bill is—we know that generally it's police services that are providing the information.

Ms. Laura Berger: Right.

Mr. Randy Hillier: If it's not done in the correct manner or whatever, the complainant would have to seek the minister's consent and approval—written approval—before any charges would be brought forward.

Ms. Laura Berger: Right. My sense is that an individual would also be able to bring a civil action for invasion of that person's privacy as well.

Mr. Randy Hillier: Okay. I didn't see that-

Ms. Laura Berger: It's not in the bill, but I don't see anything that precludes the normal causes of action.

Mr. Randy Hillier: What about the review? Does this cause you any concern that the review of the legislation and how it has been implemented will not be made public or that there's no requirement for it to be made public and it's strictly the minister's prerogative?

Ms. Laura Berger: Right. I think we would hope that when it comes time for the review, it is a broad-based review, that consultation with—

Mr. Randy Hillier: Would you like it to be public?

Ms. Laura Berger: I think it would be helpful if at least some of the conclusions were public and that there was some public discussion.

Mr. Randy Hillier: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Merci, madame Berger, pour votre députation présentée pour l'Association canadienne des libertés civiles.

M^{me} Laura Berger: Merci à vous.

ONTARIO NONPROFIT NETWORK

Le Président (M. Shafiq Qaadri): Maintenant, je voudrais inviter notre prochain présentateur, M^{me} Liz Sutherland, policy adviser of the Ontario Nonprofit Network. Welcome, Ms. Sutherland.

Just to be clear, the submission on behalf of the Canadian Civil Liberties Association quite strategically also contains the submission by—

The Clerk of the Committee (Ms. Tonia Grannum): No, no, it's separate. It's just that they were handed out ahead of time.

The Chair (Mr. Shafiq Qaadri): They were handed out ahead of time.

The Clerk of the Committee (Ms. Tonia Grannum): And for the Ontario Nonprofit Network.

The Chair (Mr. Shafiq Qaadri): And for the Ontario Nonprofit Network. Thank you.

Ms. Sutherland, your time begins now—five minutes, as you've seen. Please begin.

Ms. Liz Sutherland: Thank you, Mr. Chair. I'm Liz Sutherland. I'm pleased to be here on behalf of the Ontario Nonprofit Network. We're the network for the 55,000 non-profit organizations that make Ontario communities more vibrant, inclusive and innovative places to live, work and play.

The issue of police record checks is incredibly important to our network. About half of our network has paid staff and the other half doesn't, which, you can imagine, is an issue when it comes to reviewing police record checks in volunteer-led organizations.

Our sector provides volunteer opportunities for five million Ontarians, and our interest in Bill 113 is ensuring that these checks are used appropriately as one tool in a comprehensive approach to volunteer and employee screening.

I've got five main points I'll touch on quickly. First of all, I would like to say that ONN is pleased with Bill 113. We were pleased to see it tabled. It's an important piece of framework legislation, and the legislation reflects a lot of the discussions that we had with the ministry in advance of its tabling.

We have been working for some time with the John Howard Society, the Canadian Civil Liberties Association and the Ontario Association of Chiefs of Police to press for changes to the police record checks system. We're pleased to see that this bill builds on the good work done by the LEARN network and others in our sector.

We're pleased with the consistent terminology it establishes and we agree with the provisions for the vulnerable sector checks and the requirement that an individual give consent before the information in his or her check is released to a third party. We appreciate the increased consistency around police record checks across a number of existing acts, such as those that govern child care and long-term care for the elderly.

Our second point is that unless Bill 113 is amended to address processing timelines and the cost to volunteers of police record checks, we will seek clarity in the forthcoming regulations under the act to provide consistency on these issues.

We've heard from non-profits that some police services can process checks in days while others take 10 weeks or more. There's also significant variability in terms of the cost. About half the police services in Ontario charge for police record checks and the other half don't, and we'd like to see consistency on that practice.

Aside from regulating the fees and timelines, we'd like to see the regulations provide some clarity on the circumstances in which different levels of checks are used. We'd like clarity on record check providers offering electronic applications and processing. We'd like to require that police record checks state in their public materials that they offer all three levels of police record checks, to reduce the overreliance on vulnerable sector checks. Finally, we would like to see a robust framework for statistics to be collected and released as data sets in accordance with the Ontario government's draft Open Data Directive.

These are things that we would like to see in the regulations if we don't see them amended in the bill itself. I know there has been discussion at second reading about these things.

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Our third point is that ONN is concerned that the interpretation of sensitive information released as part of vulnerable sector checks remains in the hands of employers and stewards of volunteers, particularly in the case where non-profits have no staff. Ultimately we would like to see this legislation complemented by two systems that would further reduce the administrative burden on non-profits: first will be a central screening

service that provides clear results—pass, fail, adjudicate or appeal—for vulnerable sector checks, as is in place in British Columbia, instead of police record checks information that non-profits have to interpret themselves. We'd also like to see a program that covers the cost of volunteer checks if it is determined that fees are continuing to be charged for volunteer checks across the province. So that's the system that we would like to see in place: this framework, a central screening service, and a program for volunteer police record checks costs.

Our fourth point is that we support, in principle, the idea that private member's Bill 79, the Helping Volunteers Give Back Act, be incorporated into this bill. It would allow the volunteers to use the results of a police record check across multiple organizations, within a given time frame, without paying additional fees. We realize that this may not be possible for vulnerable sector checks because different information may be released to different organizations depending on the nature of the position.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Liz Sutherland: Thank you. But for other checks we think that this would be a good idea, if these continue to be charged.

Our last point is that we are looking forward to working with the Ontario government and our other partners on public education. We know that police record checks are overused in this province and we would like to encourage more organizations to use the Screening Handbook and the 10 steps of screening, of which police record checks is only one. We've heard reference to education in this bill. If there may be an amendment, that's great. If not, we would like to—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sutherland. To the government side, to Mr. Balkissoon. Three minutes.

Mr. Bas Balkissoon: Thank you, Mr. Chair. Thank you very much for being here and making your presentation. I just wanted to ask a couple of questions. You made it very clear that you participated with the John Howard Society and the chiefs of police and everything, so you're quite pleased that this bill is incorporating everything that is in the LEARN guideline?

Ms. Liz Sutherland: We can't speak to the technical specifics of that, but our understanding from our partners is that the LEARN guideline has been well reflected in this bill. Our interest, though, is in how this will affect employers and stewards of volunteers, so we shouldn't comment on the actual technical aspects of the police records themselves.

Mr. Bas Balkissoon: So you see the three different checks actually helping in your checks that you receive for volunteers today—that they would provide more opportunities for more volunteers in the long run?

Ms. Liz Sutherland: It certainly provides clarity. Now that we know which levels are available across the province, we can do better education on that and where the different levels are appropriately used. So certainly that's a useful framework for our sector.

Mr. Bas Balkissoon: You mentioned the multiple use of a record check and you did say you realized that there should be some timeline. Do you have any idea, if I was to get a record check today, how long it should be valid for? The people issuing the check have a concern that it's a snapshot as of that day. If something happens in the near future, it would not be captured, so have you given much thought about what you see as a reasonable time frame?

Ms. Liz Sutherland: The private member's bill refers to a year as being a reasonable time frame. I would say that would be a minimum. Some organizations say every three years; I think that seems reasonable. Frankly, the number of people who are going to offend over the course of a period of a year or two who don't have a record already—I don't think this is a major issue in terms of risk management for non-profit organizations.

Mr. Bas Balkissoon: My colleague here has a question.

The Chair (Mr. Shafiq Qaadri): Ms. Martins.

Mrs. Cristina Martins: Thank you so much, PA Balkissoon. I just wanted to say welcome to Liz and thank you so much for all the work that you do. Liz is one of my constituents so I just want to say thank you for all the volunteering that you do and everything that you contribute to our community.

Ms. Liz Sutherland: Thank you, Ms. Martins.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Martins. Attending to constituents' needs is always welcome.

To the PC side: Mr. Hillier.

Mr. Randy Hillier: Thank you very much. Points 2, 4 and 5, I think, are important ones to emphasize to the committee because all members here will have experiences, wide-ranging and a wide spectrum, of how fast police checks are done, as well as the time that comes with it. There is nothing in this bill that drives or motivates or incents consistency on either of those two elements: cost or timeliness. I think it would be well-received by everybody if we could drive and have more consistency on that.

Also, number 4: We've seen this often, needing to go back to the well time and time again to get the same background check but for a different application or a different employer. It could be a host of different things: a different minor hockey league, a different bus company, I don't know.

So you don't see any inherent faults with that? Was there any response from the government in your consultations about incorporating those aspects of Bill 79 in this legislation?

Ms. Liz Sutherland: Thank you. We didn't speak to Bill 79 in particular, but we did talk about timelines and costs in general. We were told that those types of things might not be appropriate for the legislative stage, but that they could certainly be addressed in regulations. So we do look forward—if there isn't an amendment on that—to working with the government at the regulations stage

to see that those issues are addressed. They are very important for our constituents.

Mr. Randy Hillier: Are you confident that you'll be included in that development of the regulations?

Ms. Liz Sutherland: Yes.

Mr. Randy Hillier: Because as members, we're not.

Ms. Liz Sutherland: Right. Our understanding is that we will be consulted at the regulation stage.

Mr. Randy Hillier: Okay. Finally, on the education—I think that's a very substantial and not-spoken-of element: the need to create more public awareness to begin to lessen the overuse of background checks. As we've heard from many deputants today, there's no evidence whatsoever that—they're more of a—in the trade, we used to say a CYA purpose, more than an actual due diligence or to provide any tangible benefits. Any response from the government in those consultations of an interest in doing a public awareness campaign with this bill?

Ms. Liz Sutherland: Yes. It is our understanding that we would be welcomed to work in partnership with the government and other non-profits—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. The interruptions are not preplanned, I do assure you.

Ms. French.

Ms. Jennifer K. French: Okay, my turn. Hi. Thank you very much for coming. We appreciate your submission here.

I will be happy to further the point of my colleague from the Progressive Conservatives. My question is also about education. As you had mentioned, it's important to educate your sector so that they would know when to use the three different checks. What would that education plan look like for the broader public in terms of overuse or specifics there, but also in terms of your own sector and the importance of understanding when to use which check?

Ms. Liz Sutherland: Yes. I do believe that a public education campaign can actually address some of the issues that we have with costs and timelines because the overuse of police record checks contributes to those issues. I can't sketch out a plan for you, but I certainly can say that there is a network of volunteer centres across Ontario. We have strong connections with them and with Volunteer Canada on appropriate use of police record checks in an overall holistic screening approach.

You could use any kinds of mechanisms, whether it be webinars or workshops—I know that some of my colleagues have already conducted some of these—but certainly an outreach effort in lots of different parts of the province to get the word out to non-profits through their own networks I think would help.

Ms. Jennifer K. French: Okay. Another thing that you had mentioned was that you would be advocating for the development of regulations, especially to ensure that fees, timelines and other processing barriers are addressed. We've heard now about fees, costs and

timelines, but other processing barriers—if you'd like to elaborate.

Ms. Liz Sutherland: Thank you, yes. We've heard that some police services require money orders. In this day and age, that seems archaic and it can also be an added cost to purchase a money order. We think that it would be appropriate to move to electronic applications and processing of these checks and that would eliminate some of the barriers in terms of paper-based applications.

Ms. Jennifer K. French: Okay, that's interesting. More than eight seconds?

The Chair (Mr. Shafiq Qaadri): A minute.

Ms. Jennifer K. French: Oh, sweet. Okay. Shoot, I lost my spot.

Also, back to the cost, then: As you had said, a program that covers the cost of volunteer police record checks for eligible non-profit organizations is something that you would advocate for. Do you have opinions on what that could look like?

1520

Ms. Liz Sutherland: There is a model in Alberta. There's an organization in Alberta, Volunteer Alberta, that actually runs a program for the government whereby they essentially legitimate non-profits that should have access to that program and ensure that they have the right tax status and so on so that they can take away the cost. There's a cap on the program, but it's used by a lot of non-profits in Alberta. With some tweaks, it seems to be working fairly well, so we would examine that model for here.

Ms. Jennifer K. French: We would hope, then, that the government would also examine that model.

Ms. Liz Sutherland: We would hope so.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Sutherland, for your deputation on behalf of the Ontario Nonprofit Network.

JUSTICE FOR CHILDREN AND YOUTH

The Chair (Mr. Shafiq Qaadri): Is Ms. Birdsell from Justice for Children and Youth here? You're right on time. You have five minutes for an opening address, and three minutes by rotation for questions.

Ms. Mary Birdsell: Thank you. I will just pass to you our written submissions.

The Chair (Mr. Shafiq Qaadri): Please be seated. Your deputation officially begins now. Your colleagues are welcome to join you. If you speak, please introduce yourselves. Go ahead.

Ms. Mary Birdsell: Thank you. I am Mary Birdsell. I am a lawyer and the executive director of the legal clinic Justice for Children and Youth. I'm here with my colleague Emily McKernan, who is a lawyer in our office as well.

What we would like to do today is just speak to you briefly about the impact of the Police Record Checks Reform Act on Youth Criminal Justice Act matters. We're going to restrict our comments to that.

What you'll see in our submission is that we've raised essentially two levels of concern; but really one amendment to the bill, in our view, would resolve the totality of the problem in some respects.

We're very pleased to see this bill. Over the last 15 years, we have been advocating and working on the issue of the disclosure or non-disclosure of police records, especially in the context of records checks for volunteer opportunities and employment opportunities. Young people are making these kinds of requests.

What we're seeing routinely with clients in our office is that their records are being disclosed—not just records during what you may be familiar with as the access period provided for in the Youth Criminal Justice Act, but beyond that period of time as well.

If I can back up for a moment, the difficulty is that the Youth Criminal Justice Act, having authority over all records, including police records, prohibits the disclosure of information except to a specific list of people who are enumerated in the Youth Criminal Justice Act. The reason that police records get disclosed is that the young person is the one making the claim, and of course they are entitled to access to their records, but really, the purpose of that access is to use it to give to a third party. The Youth Criminal Justice Act would actually make it illegal for that young person to then go and disclose to the employer.

But of course, the circumstance—you can imagine a young person is applying for a job or a school placement opportunity or a volunteer position. They are asked to do a police records check. It comes back with information on it about their involvement with the criminal justice system, and they feel obligated to pass it on to the employer, even though doing so is actually a violation of the law. So we're thrilled to see this piece of legislation come into place because it creates a standard that police forces across the province could adhere to. What we particularly appreciate is that at section 4(a), the bill prohibits the disclosure of Youth Criminal Justice Act records, in accordance with the Youth Criminal Justice Act.

Our concern is that there are other places, then, that make reference to Youth Criminal Justice Act records, and it becomes unclear. Our worry is that with that lack of clarity, with that potential confusion, even if that's not the intention of the bill, that potential confusion will result in erroneous and actually illegal disclosure of information.

You'll see in our submissions that we've made a number of suggestions.

Our primary suggestion is that after section 4(a), you include a section 4(a.1) that would say nothing abrogates or derogates from the ability of a young person himself or herself to access records. In our submission, that would cure the things that I think section 11 and schedule 1 are trying to resolve, because after that initial statement in section 4(a) where it says that no Youth Criminal Justice Act record shall be disclosed, then section 11

makes reference to Youth Criminal Justice Act records and so does the schedule.

The only thing I can imagine or understand about why section 11 and schedule 1, item 2 mention Youth Criminal Justice Act records is because they're trying to address this problem about what if the young person just wants the record themselves, which of course they are entitled to? That's why we've suggested that there is a simple response, which is simply to say that young people are allowed.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Mary Birdsell: Okay. We've made a couple of other suggestions which would be alternatives to that primary suggestion and also cure the possible confusion about where there is reference to Youth Criminal Justice Act matters and where there is not.

I invite you to look at our submissions that are on paper.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Birdsell. To Mr. Hillier of the PCs.

Mr. Randy Hillier: Thank you very much. It's interesting and it's the first time that it's been raised in today's hearing, so thank you very much.

This is going to, I think, take some time. Unfortunately we are only permitted three minutes as part of the government efficiency program on time, I guess—three minutes to review this bill.

That is interesting that you're saying at the present time, there would be a contradiction between both the Youth Criminal Justice Act and this bill before the House; that one prevents disclosure of that information, but then also permits it without having amendment 4(a.1) included.

Ms. Mary Birdsell: We had the privilege of being consulted by the minister's office in terms of preparation for initiating this bill, and it's my understanding from them that they did intend to prohibit the disclosure of youth criminal justice records in accordance with the Youth Criminal Justice Act.

My understanding from our meetings with them—but I'm left with the bill at this point—was that they did agree with our assessment of what the Youth Criminal Justice Act requires and meant for this bill to be in harmony with the Youth Criminal Justice Act. Our concern is that the way it's drafted may lead to some confusion and a lack of clarity, which is exactly the purpose of the bill: to create clarity.

Mr. Randy Hillier: Okay. Well, maybe I'll just leave that for the parliamentary assistant to comment on when it comes around to the Liberal side. I would like to hear what the government's view is on that amendment. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. To Ms. French of the NDP.

Ms. Jennifer K. French: We appreciate your coming in and bringing this up. We had heard earlier from the John Howard Society briefly on the issues around youth and disclosure.

I appreciate having your submission. There is obviously a lot in here. Is there anything more that you didn't have the chance to say that might bring a bit more clarity, because as I'm trying to rapidly make sense of this in the limited time allotted, I would appreciate, obviously, your expertise to help clarify.

Ms. Mary Birdsell: Okay. Well, what I would say is that our first suggestion, where we propose language to be included as section 4(a.1)—I just did that numbering

because it fits in the existing bill—

Ms. Jennifer K. French: That nothing abrogates the youth from accessing their own records.

Ms. Mary Birdsell: Yes. I guess I've already said this, but that would cure the problem or the potential confusion. If you were to do that, then that would be done consistent with removing item 2 of the schedule altogether and removing section 11 altogether.

The schedule would then not make reference to the Youth Criminal Justice Act because it just wouldn't apply. The Youth Criminal Justice Act records would never be disclosed, except to the individual young person.

Ms. Jennifer K. French: You had said earlier that you were trying to understand why the government would have put that piece in. As you've consulted with them, has it been explained why that decision was made?

Ms. Mary Birdsell: I would hate to speak for them, obviously—I'm not in a position to do so—but my understanding was that it was to address this problem of the young person themselves trying to access the record.

1530

Ms. Jennifer K. French: Okay. Well, while you're here and we've got you, this would be an opportunity to share some of the struggles that—well, you're speaking on behalf of youth as they have been trying to navigate their journeys, what this means to have this bill work for them. How is this—

Ms. Mary Birdsell: Absolutely. In our written submissions we included three very short anecdotes of young people whom we've helped in this regard. But it actually really does have a very serious impact. The Youth Criminal Justice Act seeks to protect the privacy of young people and to assist in non-stigmatization and rehabilitation. The point is, really, to allow young people the sort of latitude, if you will, to have had a mistake, to have faced the consequences, and then to be able to move on without the negative impact that criminal justice system involvement can often have.

A couple of the examples that we used were young people who were in school a number of years later and do a record check for—one of the examples is a student in a nursing program. She got in a fight in school and had an assault charge. She resolved that and was now in a nursing program. She lost her opportunity to participate in that program—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. To the government side: Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you very much for explaining your position for being here. We appreciate it.

I'm trying to follow what you're saying, but I want clarification because section 11, which you made reference to, clarifies that the individual, if a record check is processed, will receive a two-page form. The first page will be just a criminal records check, and the second one would be everything under the Youth Criminal Justice Act. It will be separate. Since the record is now being given to the individual, which is different from what was being done in the past, then it's up to the individual to know that they only have to provide, to whomever is requesting it for employment or nursing school, as you defined, just the first page and not the criminal justice act page.

I think that's what the ministry is trying to do here. The record is there. We have to provide it because the person is requesting it, but we provide it separately so that one can proceed without the other to the employer or the organization for registration. Is that not clear enough?

Do you still think that would be a problem?

Ms. Mary Birdsell: I appreciate you pointing out the details of section 11. One of the suggestions that we make in our written submissions is that, if you're going to keep section 11 and it's going to read in that form—we've given some alternative wording that we think would help to clarify the problem—you might also add a requirement that there be some kind of a cover letter.

Our concern is that the young person who gets those two separate pieces of paper is still going to be in a position where they're unclear about what they're supposed to do with these two pieces of paper. Our experience is that young people receive letters from people in positions of authority or organizations of authority and in many, many circumstances they really don't question what the next step is.

For instance, all of these young people who pass on the police record checks that they've been getting in the past could have come to us first to say, "What should I do with this?"

Mr. Bas Balkissoon: Okay. I understand what you're saying. You've consulted with the ministry—

Ms. Mary Birdsell: We have.

Mr. Bas Balkissoon: —and you've explained this cover letter, or whatever it is that you're looking for with the two pieces of records. What was their response?

Ms. Mary Birdsell: They were receptive to that and perhaps they were thinking of including it in a regulation or some other avenue.

Mr. Bas Balkissoon: So if it's done in regulation, that would satisfy your concern?

Ms. Mary Birdsell: Well, I would still prefer the suggestions we're making here today because I think as far up front as you can put it is how you're really going to solve the problem. I'm concerned that things that are left to a regulation will be less accessible to young people, in terms of their knowing the law themselves, and less accessible to police forces—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Balkissoon, and thanks to you, Ms. Birdsell, for your deputation on behalf of Justice for Children and Youth.

CANADIAN MENTAL HEALTH ASSOCIATION, ONTARIO DIVISION

The Chair (Mr. Shafiq Qaadri): I invite our next presenters to please come forward: Ms. Chandrasekera and Ms. Quenneville from Canadian Mental Health Association, Ontario division. Welcome. Please be seated. Your five-minute opening address begins now.

Ms. Camille Quenneville: Thank you, Mr. Chair. Good afternoon, everyone. My name is Camille Quenneville. I'm the CEO of Canadian Mental Health Association, Ontario division. With me is my colleague Uppala Chandrasekera. She is our director of public policy. In the interest of time, I'm going to stick to my script.

CMHA is the largest community-based mental health and addictions service provider in the country. We support 120 communities across Canada. In Ontario, we have 32 local branches and we provide services to individuals across the province from all walks of life and from all age categories.

We would like to thank and commend Minister Naqvi. I think he has been exceptionally accessible and consultative as he developed this legislation, which is designed to suppress the disclosure of mental health police records and other non-conviction records.

While commending the government, we also want to recognize both opposition parties and express our gratitude to you, as well, for your unanimous support thus far in Bill 113.

CMHA Ontario is pleased to have been consulted during the drafting of the bill, and applauds this proposed legislation as a positive step towards reducing the harmful effects of mental health police checks on a vulnerable population.

Our organization has been working to address issues relating to mental health police records for nearly a decade. This is a long time in the making. We've done so on our own and in conjunction with several other important stakeholders who have all been committed to this cause.

For example, Ontario division is currently the co-chair of the Police Records Check Coalition. As you might be aware, this group was created in 2009 to specifically address the issue of the improper release of non-conviction information.

CMHA Ontario has also continuously worked in partnership with the provincial Human Services and Justice Coordinating Committee, which, I should tell you, is now housed in our office and which has also written about the negative issues arising from police record information.

With respect to Bill 113, we're particularly pleased that this proposed legislation is modeled after the guideline developed by the Ontario Association of Chiefs of Police. CMHA Ontario supported the development of the Law Enforcement and Records Network guideline, also known as the LEARN guideline, in 2011. We

provided further input to the police chiefs during the review of the guideline just last year.

This legislation is quite simply the right thing to do. I think that's obvious by the support it has had from all three parties to date.

It's important to note that the vast majority of people with mental health and addictions issues never come into contact with police—I don't think we can emphasize that enough—but we do know it happens.

Police are the first responders in mental health crisis situations most often, and they often accompany those individuals in crisis to the emergency department or to other places for treatment and medical assessment. It's at that point that a mental health police record is created. The mental health police records are helpful when the information is used internally by police to assist a person experiencing a mental health crisis, but the disclosure of this for other purposes can create barriers for people who are already vulnerable and can increase mental health stigma.

In fact, mental health police records can prevent people with mental health conditions from securing professional employment, as well as accessing services, facilities and travel.

This legislation will ensure that mental health police record information will not appear on any level of police check.

We held an internal consultation with a group of our stakeholders to discuss the contents of Bill 113, and we're providing you with a written summary of our discussion for your information. Above all, there was overwhelming consensus from our group that the legislation should specifically state that the following are prohibited:

- —any reference to interactions under the Mental Health Act:
- —any references to incidents involving mental health contact; and

—any references to mental health-related information.

Language plays a key role in any legislation, and this is no different. It impacts on the way that society frames the conversation around mental health. Explicitly stating that mental health police record information and interactions under the Mental Health Act are prohibited from disclosure would ensure that the privacy and the rights of people with mental health and addictions issues are protected.

CMHA Ontario strongly recommends that this legislation provide clear definitions for each of the three levels of police checks, with references made to the LEARN guideline. The LEARN guideline itself provides clear definitions of each level of police record check and provides recommendations around what level of check is appropriate and for what purpose.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Camille Quenneville: Thank you. Providing these clear definitions will ensure that police services, employers, other service providers and the individuals seeking that information about their own police record

checks are educated on the utility and purpose of each check.

We're delighted to see this legislation as it currently exists. We believe it will be extremely helpful to our clients, some of whom are concerned about the possibility they could have a police check. We also think that this will mean less duplication and more time and money saved for Ontarians as well as police services—

The Chair (Mr. Shafiq Qaadri): Thank you. I offer the floor now to Ms. French of the NDP.

Ms. Jennifer K. French: If you'd like to finish that thought—

Ms. Camille Quenneville: Thank you. I'm grateful for that.

The point is that this works for all parties. I think when you're talking about people who struggle with their mental health or an addiction or have had a diagnosable mental illness, they are by their very nature vulnerable. The likelihood that they could end up with an unwanted police record—not by their own making but rather because they sought assistance, help or were in a crisis situation—really has a long-term implication for them potentially down the road in terms of employment and carrying on with life the way that you and I enjoy it.

Ms. Jennifer K. French: One would also imagine that it might give them pause to think about whether they would interact with police again, should they ever be in need.

Ms. Camille Quenneville: Well, that's certainly a concern. It's a fine balance. I will tell you that we believe that if there has been an attempt of suicide, that information should be made available internally so that if the police are again called to that residence or location, they are aware of those past incidents. That said, we don't believe that should be tagged to that individual for the duration of their life, and potentially have the stigma that I've outlined.

Ms. Jennifer K. French: One of the things that I have learned along the way or think I understand about this as well is that if family, or someone in the circle of an individual who may be challenged with a mental illness, were to reach out and call the police or authorities on their behalf, that then can be held against the individual. Does this bill address those concerns as well?

Ms. Camille Quenneville: I'm going to ask my colleague Uppala to jump in, but the short answer is yes.

Do you want to get into the specifics of that?

Ms. Uppala Chandrasekera: Yes. I think for us, the issue really is for this bill to explicitly state that any contact under the Mental Health Act would not be disclosed. A friendly amendment to the schedule, for example, would be to add another row to say, "Mental Health Act" and "Do not disclose. Do not disclose." across the board. It would make it very clear and simple for people to understand when they are interpreting this bill.

Ms. Jennifer K. French: Okay, thank you.

You had brought up costs, as we have heard from other deputants. Is there anything further that you would like to add about your recommendations regarding costs?

Ms. Uppala Chandrasekera: We believe that the specific cost to do the record check should be stated in the act, and we suggest \$10; that provisions for providing support to people who are low-income or students or volunteers should be actually built into the act itself; and that the record only last the purview of a whole year, so that someone is not paying—let's say they needed a check for an employment for one month, and two months later they are volunteering somewhere else and they don't have the-

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. To the government side: Mr. Balkissoon.

Mr. Bas Balkissoon: Let me say thank you very much for being here and making your presentation. You were very extensive, and I know you participated in all the processes up to this point. We appreciate that support.

The minister, I believe, has committed publicly to doing some kind of public education campaign, because it has been widely heard, and I think heard very clearly, that public education on what this bill is actually doing will be helpful to a lot of people who are unaware of their rights under these types of checks.

Has your organization given it any thought, or do you have any ideas on what that public education would look like and what means the government can use to

disseminate that information?

Ms. Camille Ouenneville: We have found with respect to this legislation that the minister has been, as I said at the outset, very accessible and wanting opinions, which we've been happy to provide. I think that would certainly continue.

I would highly encourage him to have public education around this issue. We find that the best way to reduce stigma is for people to be better educated about the challenges faced by people who struggle with their mental health or have a diagnosed mental illness or an addiction. We have a network across the province with 32 branches where we have easy access to the public, who we are in touch with regularly, and we have our own anti-stigma activities that we run, public awareness activities that we run, and public education activities that we run. So I think we could be extremely helpful if the minister chose to go that route, and, as I said, we would encourage him to do so.

Mr. Bas Balkissoon: At the very end, as you concluded, you just mentioned three points in your presentation, and I heard them and made notes. Is there anything else that you want to share with us?

Ms. Camille Quenneville: I think that right now there is a unique point in time where there is a whole lot more attention being paid to people who have a mental health issue or to the mental health of Canadians generally speaking, and of Ontarians.

This kind of legislation goes a long way to reducing the stigma and beginning that public conversation. I think that, simply put, as I've said to the minister, it's just the right thing to do. We are delighted to offer our support to it, and with very few caveats. We're very pleased to be part of this process thus far.

Mr. Bas Balkissoon: Thank you very much, and thank you for taking the time.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Balkissoon. To the PC side: Mr. Hillier.

Mr. Randy Hillier: Thank you very much. We have heard a number of these recommendations from others. They are all thoughtful and reasonable. Hopefully we can encourage everybody on the committee to adopt and accept some of these amendments, and get a good bill that much better. Thank you very much.

Ms. Camille Ouenneville: Thank you. I wasn't under the impression that we were offering up anything new today.

Mr. Randy Hillier: You know, fees and also the use of the background record checks as well.

Ms. Camille Ouenneville: Yes. I'm actually very grateful that you raised that. I think that it just really does speak to, again, our point, which is clearly there is unanimous agreement that this is the way we should all proceed. I'm delighted that you raised it. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier, and thanks to you, Ms. Chandrasekera and to your colleague on behalf of the Canadian Mental Health Association.

NATIONAL ASSOCIATION OF PROFESSIONAL BACKGROUND **SCREENERS**

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward: deputants Fairweather, Anstey, Leblond and Piukkala on behalf of the National Association of Professional Background Screeners. Welcome and please begin now. Please do introduce yourselves in turn.

Ms. Rhonda Fairweather: I'm Rhonda Fairweather, chair of the National Association of Professional Background Screeners.

Mr. Rod Piukkala: Rod Piukkala.

Ms. Michelle Leblond: Michelle Leblond, past chair.

Mr. Todd Anstey: Todd Anstey, chair-elect.

Ms. Michelle Leblond: Thank you to the Standing Committee on Justice Policy for allowing us to speak. We applaud the intent of the legislation and the standardization that's meant to be brought to the process. Although we had not been involved in the initial consultations, which we did find a little interesting, we're pleased to be here now and I think what you'll see is that we represent a bit of a different perspective on the matter.

NAPBS is a national association representing the third-party background screening industry in Canada. Our members probably cover about 90% of the thirdparty background checks that are done in Canada. While there is a whole range of services that are being done, primarily criminal record checks is our forte.

One of the challenges for our clients at this point is to understand how this legislation is going to impact them, so we're here today to speak on behalf of our members, which are the third-party screeners, our clients, the millions of Canadians and Ontarians who are going to going to go through the process, as well as the police services we work with, because this bill has caused quite a bit of confusion and skepticism about how the actual workability of the act will be. Our focus is on ensuring an accurate, secure, efficient and timely process for criminal record checks and really, as I said, what we're focused on is how to operationalize the bill.

Our clients span industries. We deal with both for- and non-profit entities right across Canada. Some of them may screen one or two individuals, some will screen thousands in a given day or week. The challenge is that, for non-criminal justice purposes, there are probably about eight million checks that are done a year. Three million of those are vulnerable sector, which our industry does not do, and of the remaining five million, a substantial majority is done by our industry. The way we do those is through proprietary relationships with police services, and we're governed by an MOU—memorandum of understanding—with the RCMP.

As part of that standard process, we do not receive the details of criminal record checks. We only receive one of three responses. So when we view the bill, even though it does indicate applicability to a third-party industry, we are still a little confused about how that's actually going to operationalize.

Mr. Rod Piukkala: I've been a police chief in this province. I've been a police officer for 34 years. I understand both sides of this argument. I have been in the screening industry for six and a half years. Criminal record checks has been my business for the last six and a half years.

We have been way ahead of the curve on most of this legislation. I've heard youth criminal justice matters—we do not release that type of information, as private sector people. We do not release MHA—Mental Health Act—information. We do not release local police information where there have been no charges laid.

We're looking at convictions and where there's a charge laid by the police. That is the type of information that we would release. Ninety-two per cent of the people are clear—92% of the applicants that we see, and we do millions of these a year. So when we looked at this legislation, everything fits with the way we are doing business, except there are a couple of things. As Michelle has said, there are a couple of operational things that you should be aware of.

The integrity of the data: As soon as you put the data in the hands of the individual, there's a gap there. That is a major gap. There's not only the integrity gap; there are delays in getting it to the actual client who needs it. People do not just go get a criminal record check, right? They need it for employment or they need it to volunteer. They need to present that to somebody; it has to be presented to somebody. We just want that to be presented

to the client and the applicant at the same time. It can be done very easily through dual consent. The RCMP has got that in their forms.

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In fact, this legislation is a disconnect in many respects with federal legislation that deals with the disclosure of information—the Criminal Records Act—where it goes to the client and it goes to the applicant at the same time in a vulnerable sector check. There's a bit of a disconnect there.

One, we see a problem with consent. It could be resolved by dual consent, the same as the RCMP have on all their forms. You sign an informed consent for the check and an informed consent that you want it shared. That was the whole purpose that you wanted the check in the first place, if you will.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Rod Piukkala: Okay. The second issue, another solution, is that we do not see ourselves being impacted by this. We don't release details. The third-party industry, if you will—our industry—does not release details. We see that the information that gets to the individuals quickly is the "clear" information. We're an inclusive versus an exclusive—we've got that sort of an objective. We want these people who are clear to move on, get a job quickly and timely, and do the job that the employer wants.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll now pass to the government side. Mr. Balkissoon.

Mr. Bas Balkissoon: I just want to quickly say to you that we've had many public meetings on this issue and we've heard loudly from the public, especially people who have been affected by the system, that they would like to see the record in their hands first before it goes anywhere. If you read the legislation properly, also, it allows that individual to request a review. So if I agreed to your consent part, it breaks that commitment we made to the public. I would like you to explain: How do you see that working? Then maybe I can take it back.

Mr. Rod Piukkala: Very easily, sir. As I said, 92% of people are clear; that's no results. Why disadvantage those people in the process? If they have no results, let them share it. If there are any results, it goes to the applicant and they discuss it. They discuss it in a reasonable way with the client or the applicant, or they decide to share it or not share it. But 92% of the people, of these millions of people who are getting criminal record checks a year, are now going to be disadvantaged. Not only that, there's an opportunity for fraud, and that happens. That happens across the country, where the results are changed; paper results can be changed.

There's also a delay. People are going to forget it, and they're going to give it to the wrong person in the client base when they do have it. Human rights considerations may not be fairly applied to that record.

You're putting a lot of onus on the individuals in all these organizations, not-for-profits and for-profits, to look at these checks and realize that this has got integrity in it. Mr. Bas Balkissoon: Unfortunately, most of the organizations that presented, they've also been at the public meetings and they've demanded that.

You're saying to me: If the person you're doing a check on gives you a consent request, then you want the system to respond to that consent request and the record be given to you plus the person.

Mr. Rod Piukkala: Not so much us. We're not here as an industry that we want the record—

Mr. Bas Balkissoon: No, but you get a good, bad, indifferent or clear record, or whatever. Whatever you're getting, you want to get it at the same time the person gets theirs. Is that what you're saying?

Mr. Rod Piukkala: That's correct.

Mr. Bas Balkissoon: Therefore, in the review process for that individual, are they giving up their rights to a review? Because once you get it, they cannot request a review.

Ms. Michelle Leblond: No, they're not. What we're really trying to understand first is the definition of "results." Does a result include both a positive and a negative result?

The second piece, which was actually the first recommendation, is a consideration for an exemption for our process because giving an individual a yes-no-maybe answer doesn't allow them sufficient detail to know what they're releasing. The two solutions are actually mutually exclusive solutions.

Mr. Bas Balkissoon: I have difficulty understanding it, but I'll let the others go.

The Chair (Mr. Shafiq Qaadri): To the PC side: Mr. Hillier.

Mr. Randy Hillier: Thank you very much for being here. It's a pleasure to see somebody from a little bit of a different side of the fence as well making a presentation today. I think both my colleague and myself will probably want to speak with you in more detail afterwards, because we're strictly limited to three minutes.

This dual consent: We've seen a lot of problems with background checks and the length of time to get them, and the ever-growing desire and need by different companies etc., for relying on background checks. That's one of the things that I would like to see: a more expedited system where people are not losing job opportunities because of the time it takes to get a background check. Being able to get a background check, preferably being able to use it for a period of time, and it being accepted by multiple employers—when people are out seeking work, they're not necessarily just seeking employment from one employer. They're in the market-place. Maybe if you could just make a few comments about how what you guys do could improve the system, or within that context.

Mr. Rod Piukkala: Absolutely. First off, our industry turns around results within the day or hours in almost all cases. By and large, though, we're competitors at this table. We're pretty consistent on pricing as well, in many respects. It's a market-driven process. But our turnaround time is very consistent. That's one of the things that we

saw that would be caused by putting the results in the hands of the applicant: that they'll forget to turn them in. They'll take their time. It will go to the wrong person at the organization. All that will increase the delays and increase the delays in being—

Mr. Randy Hillier: But you're not getting the information back from the actual provider within a day?

Mr. Rod Piukkala: Oh, absolutely, sir. Mr. Randy Hillier: Oh, is that right?

Ms. Michelle Leblond: Yes. We're not getting a detailed response but we are getting, "There appears to be a record," or, "There does not appear to be a record," or we also have a disclosure process whereby the individual can disclose their record up front and it can be confirmed or denied. That record is coming back to us within a business day. It's literally within hours. That's one of the challenges that I think is out there. The experience at a front counter of a police station is very different than the experience dealing with our industry, and in many cases our industry is now supporting some of the police front counters because they have got into a business that they have no interest in being in and it's not a core policing function.

Mr. Randy Hillier: And oftentimes it's not the competency—

Ms. Michelle Leblond: It's just paperwork, and unfortunately it's being done by lower-level admin staff versus people expert in the ability to review criminal record checks.

Mr. Rod Piukkala: Here's what's happening in police departments: As more requests come in, more people are put on the job to put it around in some sort of expeditious time—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. The floor now passes to Ms. French of the NDP.

Ms. Jennifer K. French: Thank you. We appreciate your coming to Queen's Park today and weighing in on this

Just so that I'm clear: As you have said, your industry doesn't work with vulnerable sector checks. In this piece of legislation, as it lays out the three different types of checks, perhaps you have thoughts on the breakdown there and how you connect to that.

Mr. Rod Piukkala: The breakdown is exactly what we do. We do both those types of checks. In our industry, we do what you might call a CPIC check only—convictions only—and in the second piece it has some local police information to it or outstanding charges; we do that. We do not do the vulnerable sector check, which is essentially one other piece of information, which is a review of the Pardoned Sex Offender Database of 13,000 names to see if that person is in there. That's the integral difference from the first two. We do not do the third piece.

Ms. Jennifer K. French: Okay. Some of the conversations that we've had before now have revolved around an education piece. Would you have thoughts on that part of it, greater public education, but also to whom you represent?

Mr. Rod Piukkala: Absolutely. This is exactly what we do with our client base. We have blue-chip clients—all the banks. Every sector is doing this. Part of our job as third-party providers is that we provide thought leadership, webinars, we provide information and we provide interpretation. Our job is to remain compliant and to keep our clients compliant as well, and to operate within best practices in human rights legislation and human resources. That's where our specialties are.

Ms. Michelle Leblond: I think one of the advantages we have through our association and just as a business is, we see some of the models that come out internationally. In the US there are requirements to provide a summary of rights or a notice to users when certain records are being

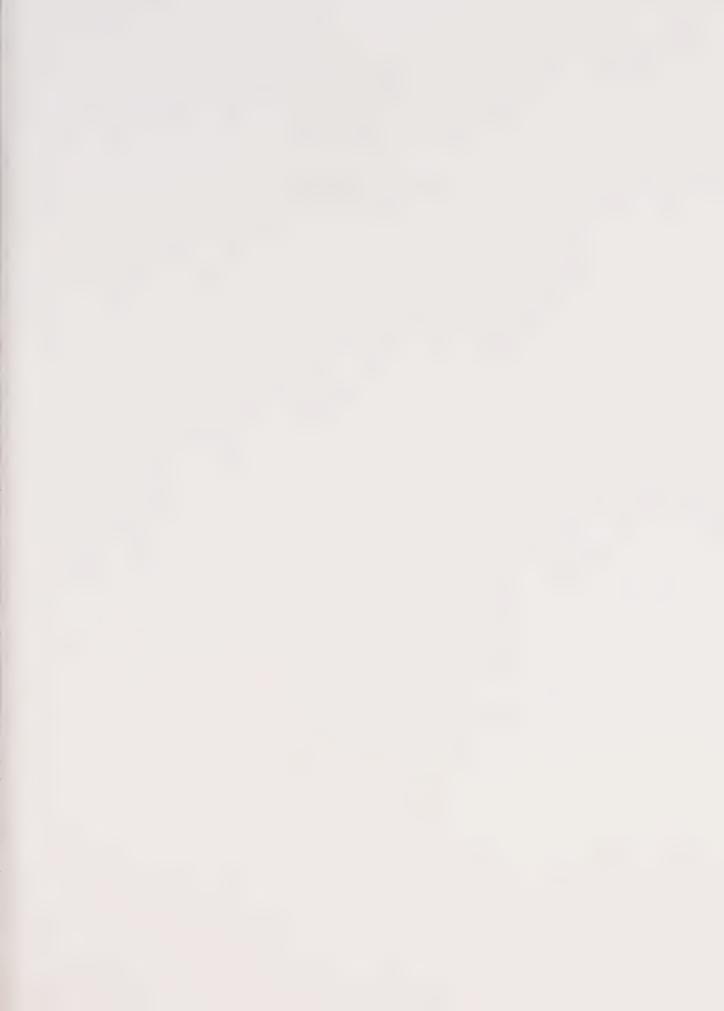
released. It's certainly within the realm of that being done here in Canada as well.

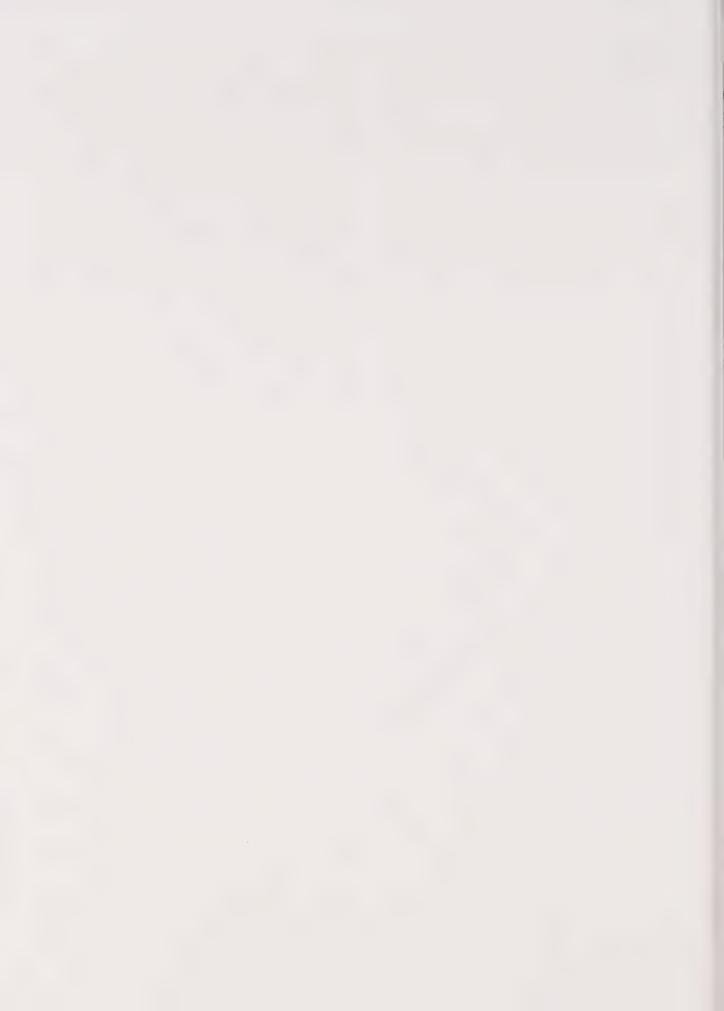
Ms. Jennifer K. French: Okay. I don't have anything further.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French, and thank you, colleagues from the National Association of Professional Background Screeners, for your deputation and presence.

Just to alert the committee, our next meeting is on Thursday, November 19, you'll be pleased to know, for clause-by-clause from 2 p.m. to 9 p.m. I repeat: 2 p.m. to 9 p.m. Deadline for amendments is 10 a.m. Tuesday, November 17. The committee is adjourned.

The committee adjourned at 1600.





Mrs. Marie-France Lalonde (Ottawa-Orléans L) Mr. Rick Nicholls (Chatham-Kent-Essex PC)

> Clerk / Greffière Ms. Tonia Grannum

Staff / Personnel
Mr. Andrew McNaught, research officer,
Research Services

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First Session, 41st Parliament

Official Report of Debates (Hansard)

Thursday 19 November 2015

Standing Committee on Justice Policy

Police Record Checks Reform Act, 2015

Assemblée législative de l'Ontario

Première session, 41^e législature

Journal des débats (Hansard)

Jeudi 19 novembre 2015

Comité permanent de la justice

Loi de 2015 sur la réforme des vérifications de dossiers de police

Chair: Shafiq Qaadri Clerk: Tonia Grannum



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 19 November 2015

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 19 novembre 2015

The committee met at 1402 in committee room 1.

POLICE RECORD CHECKS REFORM ACT, 2015

LOI DE 2015 SUR LA RÉFORME DES VÉRIFICATIONS DE DOSSIERS DE POLICE

Consideration of the following bill:

Bill 113, An Act respecting police record checks / Projet de loi 113, Loi concernant les vérifications de dossiers de police.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We convene the justice policy committee meeting. As you know, we're here for clause-by-clause consideration of Bill 113, An Act respecting police record checks. We have, I think, 18 or so motions before the floor. There is a question about how some are potentially out of order or not out of order; we'll discuss that as they arise.

If there are any general comments, I'll welcome them, but otherwise we have PC motion number 1 before the floor

Mr. Randy Hillier: Thank you, Chair, but I would ask, if there are amendments that are to be ruled out of order, maybe if we could know that in advance?

The Chair (Mr. Shafiq Qaadri): I appreciate what you're saying. Protocol wise, actually, some of it's moot—under discussion, to be discussed—so we'll come to that, as we usually do, as they arise.

Mr. Randy Hillier: Does it affect any of the other—in the view of the Clerk?

The Clerk of the Committee (Ms. Tonia Grannum): No.

Mr. Randy Hillier: No? Okay.

I move that subsection 2(2) of the bill be amended by adding the following paragraph—

The Clerk of the Committee (Ms. Tonia Grannum): Wait a minute. That's in section 2, so we need to go back to section 1 of the bill.

The Chair (Mr. Shafiq Qaadri): That would be an excellent idea.

Shall section 1 carry? Carried.

PC motion 1 now before the floor.

Mr. Randy Hillier: I move that subsection 2(2) of the bill be amended by adding the following paragraph:

"1.1 A search required for the purpose of a children's aid society carrying out its mandate under the Child and Family Services Act."

I see that the government has a very similar motion and the NDP has a very similar motion. In essence, all those motions are the same; they just appear in a slightly different order in the bill. So I think it would be wise that everybody votes for the PC amendment, and then we can delete the other two similar amendments by the NDP and the Liberal Party.

The Chair (Mr. Shafiq Qaadri): Fine. Any comments on that wisdom are now welcome. The governing side? NDP? Any comments before we vote? Mr. Balkissoon.

Mr. Bas Balkissoon: I respect Mr. Hillier's comments, but with due respect, number 5 is quite different. So we will not be supporting his motion, and I could probably give him a couple of reasons.

I think if you read the government's motion 5, the government does respond to the comments that were made by the children's aid societies at the outset. As a result of that, our motion is there, but yours, I think, falls short. If I could say quickly, the word "mandate" is kind of wide open. It's for everything that children's aid societies do and not really related to this particular bill.

If I could say to you—the government motion is probably more accurate and more fitting. We will be supporting the government's motion.

Mr. Randy Hillier: I find it difficult to believe that "mandate" and "function" are materially different.

Mr. Bas Balkissoon: You've got to read the other act to know the difference.

Mr. Randy Hillier: Maybe if you can explain to me what material difference there is?

The Chair (Mr. Shafiq Qaadri): Ms. Scott, the floor is yours.

Ms. Laurie Scott: Just to follow up on my colleague Mr. Hillier: I just wondered if maybe legal counsel could explain the difference between motions 1 and 2, which are related to the CAS, and then the government's motion, which is, I believe, number 5. Can they maybe just explain that to us? That may help Mr. Balkissoon, too.

The Chair (Mr. Shafiq Qaadri): Before I invite comments, I'm wondering if that is the function for legislative counsel or for the government at this time.

Ms. Laurie Scott: Oh, it was a legal question.

The Chair (Mr. Shafiq Qaadri): Fair enough.

Ms. Pauline Rosenbaum: Would you like me to confer with my ministry counsel?

The Chair (Mr. Shafiq Qaadri): Please, confer away.

Ms. Pauline Rosenbaum: Excuse me.

The Chair (Mr. Shafiq Qaadri): Okay. We have folks from legal services, I presume, to weigh in. Please have a seat and introduce yourself. Aim yourself at a mike.

Mr. Dudley Cordell: My name is Dudley Cordell. My last name is spelled C-O-R-D-E-L-L. I'm legal counsel with the Ministry of Community Safety and Correctional Services.

We used the specific wording that's in motion 5 based on collaboration with legal counsel from MCYS and MCSS, which are ministries that are responsible for that legislation. Their advice to us was the word "function" is the word that's used in their act. Furthermore, they wanted to reference a particular section number in their legislation, so that's why we framed our motion as it is and why we feel there is a substantive difference with the language that's used in this motion. It's a technical drafting consideration.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Mr. Randy Hillier: Yes, because it does narrow it down—it makes a specific reference to the Child and Family Services Act, which I don't have in front of me right at the moment. I was just wondering, in that section 15.3, is that not overly narrowing the request by the children's aid societies in their function?

Mr. Dudley Cordell: The position of their legal counsel was that it introduced a clarity to actually reference a particular section number and that it would achieve the same objective, but it would be done in a way that was clearer. We did rely upon their advice. It is their legislation.

Mr. Randy Hillier: Okay, thank you.

The Chair (Mr. Shafiq Qaadri): Thank you. Shall we proceed to the vote?

Mr. Randy Hillier: We'll withdraw the amendment.

The Chair (Mr. Shafiq Qaadri): Withdraw the amendment? All right. I appreciate that, Mr. Hillier.

With that, we have precisely the same motion by—

Ms. Jennifer K. French: It isn't precisely the same motion, Chair.

The Chair (Mr. Shafiq Qaadri): All right, it is imprecisely the same motion, so the floor is now yours, Ms. French.

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Ms. Jennifer K. French: Thank you. I recognize that this motion is substantively the same, but I would like to point out that this motion does use the word "functions" as opposed to the word "mandate," in keeping with the ministries who made the recommendations.

I do have a question, though. One of the differences—

The Clerk of the Committee (Ms. Tonia Grannum): She needs to move it. Sorry.

Ms. Jennifer K. French: Do I have to move it first?

The Chair (Mr. Shafiq Qaadri): We need you to read the motion, Ms. French.

Ms. Jennifer K. French: I apologize.

I move that subsection 2(2) of the bill be amended by adding the following paragraph:

"2.1 A search required for the purpose of a children's aid society carrying out its functions under the Child and Family Services Act."

The Chair (Mr. Shafiq Qaadri): Thank you. The floor is yours.

Ms. Jennifer K. French: Thank you. As I mentioned, we also use the word "functions" rather than the word "mandate."

But I do have a question about a difference that I see between the NDP motion and government motion number 5: "A search required for the purpose of" versus the government motion's "A search requested by."

I feel that the word "required" gives it a little more strength. I wondered if the government could describe the difference, or why it was "requested by" rather than "required by" in their motion.

The Chair (Mr. Shafiq Qaadri): There's a question before the floor. Is there a reply forthcoming?

Mr. Bas Balkissoon: Mr. Chair, again, as the legal staff said, it's a technicality of trying to make sure that the two pieces of legislation are compatible with each other and don't cause any confusion to anyone reading this bill versus the other bill. It's consistency within government.

Ms. Jennifer K. French: Thank you. I took that point, definitely, with the word "functions" and the specific subsection 15(3).

But I was curious whether "requested by" was unnecessarily broad versus "required by," or if that made a difference in how it actually is applied.

The Chair (Mr. Shafiq Qaadri): Also, Ms. French, since we do have the legal counsel, it's your prerogative to invite them as well—

Ms. Jennifer K. French: I would be pleased to hear their answer on that.

Mr. Dudley Cordell: The words "A search required for" versus "A search requested by" would suggest that the words "required for" are sort of objective, whereas in this case, the motion that we've drafted is "A search requested by." Therefore, it's whatever search has been requested by the children's aid society. It's tailored to the actual nature of the search. I think it's a more focused use of wording.

This isn't major stuff, but it seems to me that it would be better to have the wording in motion 5, because it refers to the actual search requested by the children's aid society. In motion 2, it just says "required for." It's a more global wording; it's not as tight. That would be the big difference that I would see.

Ms. Jennifer K. French: May I ask for a little more explanation?

The Chair (Mr. Shafiq Qaadri): Please.

Ms. Jennifer K. French: My instinct is to actually see that in opposite terms: Something that is "required" seems very specific. Whatever has transpired such that they want this search, it's required. "Requested" could be broader and less specific.

Mr. Dudley Cordell: I think that when you read the first part of motion 5 in connection with the second part, you'll see that it's requested by the children's aid society, and it's for a specific purpose as set out in subsection 15(3) of the act. I think that you have to read that together—

Mr. Bas Balkissoon: Chair, could I ask a question? The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon.

Mr. Bas Balkissoon: Maybe I can help the process, because I sat through the hearings. I believe the children's aid society—they also have employees, which would be a different request than if they were doing a search on somebody who's going to take care of a child. This is why the section is specified, to make sure it's a caregiver and not an employee of the children's aid society itself. That's why we need this to be very specific, because one check versus the other is quite different.

Ms. Jennifer K. French: I don't mean to get stuck on a word that is not—

Mr. Bas Balkissoon: I'm just hoping that I am correct.

Mr. Dudley Cordell: Unfortunately, this is another ministry's statute, and I was actually sort of hoping that they might be here today to provide this kind of clarification. But we really did rely upon what they told us. They were very hands-on in the drafting of this motion, and because it's their legislation, we relied upon what they told us. I feel fairly comfortable. It was a group of lawyers and policy people looking at the wording, and they were pretty insistent that that particular wording be used.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Potts, the floor is open again.

Interjection: Mr. Potts?

Mr. Arthur Potts: No, I'm fine. I'm just clarifying.

The Chair (Mr. Shafiq Qaadri): Thank you. Are there any further comments before we proceed to the vote on NDP motion 2? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 2? Those opposed?

The motion is lost. There was some random voting there, a voting early, voting often sort of thing. I won't go into that.

We now move to PC motion 3.

Mr. Randy Hillier: I move that subsection 2(2) of the bill be amended by adding the following paragraph:

"5.1 A criminal record check or a criminal record and judicial matters check done for employment purposes that does not disclose any details of a conviction or judicial matter."

The Chair (Mr. Shafiq Qaadri): Before I let you continue, just to advise the committee that Ms. Jones is certainly welcome to enthusiastically join her colleagues

in the vote, but it's only a moral victory as her vote does not currently count.

Go ahead, Mr. Hillier.

Mr. Randy Hillier: This motion came out of, during committee hearings, the National Association of Professional Background Screeners. Their concern was—I'm not sure if everybody remembers, but they do millions of background checks yearly for many industries and businesses. The way the bill is presented at the present time, it would slow down, constrict and constrain their ability to do expeditious background checks for employment purposes only, and not vulnerable sector checks.

I think there were very worthwhile and interesting insights that they provided to this committee. I know that the purpose of this bill is not to impede or prevent employment. We heard from many people that the process as it is today actually has impeded and obstructed people—not intentionally—from getting employment,

with delays in background checks.

This clause is a direct result of their deputation. I think it has significant merit. I would encourage everyone to consider it wisely, and the merit behind it.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments on PC motion 3?

Mr. Bas Balkissoon: Mr. Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Balkissoon.

Mr. Bas Balkissoon: Unfortunately, the government can't support this motion, and I'll explain it clearly. One of the key purposes in taking Bill 113 to this point was to create consistency and predictability for both providers and, I will underline, requesters—because those were the majority of people who showed up at the stakeholder public meetings—by defining specific types of police record checks that would be conducted. So consistency was important.

Also, what is being recommended here by my colleague on the other side would create a two-tiered system—we would like to avoid that—and also create confusion for individuals, as the terms related to police record checks would not be standardized across the province. Everyone involved in this process to this point has reinforced that they want to see a standardized process across the province and not a two-tiered system.

Furthermore—this is the most important one—individuals who requested these types of checks would not be afforded the protection provided by the act, which is the opportunity to review their records before they're presented to an employer. That has been the biggest complaint out in the community that has been affected by some of these record checks. That was one of the main sticking points with a lot of the people who presented to us. So we want to make sure that they were given the opportunity to review their records and consent to them going out.

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What the member is requesting here is really going to change the whole bill altogether—the intent of the bill—and some of the commitments that we've made to the stakeholders throughout those public hearings.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Balkissoon. Further comments?

Mr. Randy Hillier: I respectfully disagree. It doesn't alter the other processes in the bill. This is confined to criminal checks for employment purposes only. That's number one.

Maybe before I get into any further arguments on it, I've gone through the amendment package and I've not seen anything advanced by the government side to mitigate this significant concern that was demonstrated to the committee by the national association which, again, does more background checks than anybody. They don't do vulnerable sector checks.

So I see this as one of those unintended consequences that now shouldn't be seen as unintended because the issue has been brought forward to this committee. We heard time and time again—I trust every member in this committee has heard directly from their constituents—about lengthy delays in getting background checks that have resulted in either delays in employment or loss of employment opportunities due to the delays.

We want to have uniformity, we want to have consistency, but we don't want to have greater unemployment in the name of uniformity or consistency. If the government had an amendment to put forward that would better suit and better mitigate those concerns, I'd be happy to look at it and support it, possibly, but I don't see any amendment. It doesn't appear that the government took that request by the National Association of Professional Background Screeners under serious consideration.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Mr. Balkissoon.

Mr. Bas Balkissoon: Chair, just one little comment: I respectfully hear you, but I would say to you that a record check in the past is going to be a totally different process in the future. In the past, it used to be just one record; now there are three levels. That's going to clean the system up. Those who are requesting it and those who have been affected by this process in the past have supported what we've done. We've met with all of them.

The association is a private business doing its business. I heard what they said, but we've considered it and we are more concerned about the fact that there was one record in the past and now there will be three different levels of checks, which cleans the system up and helps those who have been affected by the system. We are concerned about that, as a government. We move forward, and clean up the system.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Balkissoon. Just before I offer the floor to Ms. French, Mr. Cordell, you are officially discharged until we summon you again.

Mr. Dudley Cordell: Perfect.

The Chair (Mr. Shafiq Qaadri): Ms. French.

Ms. Jennifer K. French: I have a point of clarification, if I may?

The Chair (Mr. Shafiq Qaadri): Please.

Ms. Jennifer K. French: I'm doing my best to follow along. Just specifically, subsection 2(2) of the bill—

we're into exceptions, where this is adding a paragraph 5.1. Could someone explain to me how this connects? I see here 5, as it relates to the Firearms Act, but I haven't heard that in discussions so I'm having a hard time figuring exactly where this would fit—

The Chair (Mr. Shafiq Qaadri): I think the question appropriately goes to the PCs, as it's PC motion 3.

Mr. Randy Hillier: That's a very good question why legislative counsel put it as 5.1 and not as 9—it doesn't have any relationship to firearms.

The Clerk of the Committee (Ms. Tonia Grannum): And as 5.1, it's just a new clause, so it gets renumbered and becomes number 6.

Mr. Bas Balkissoon: If it's adopted.

The Clerk of the Committee (Ms. Tonia Grannum): It would be on its own.

Ms. Jennifer K. French: Thank you for the clarification. Oh, the things you can learn.

Mr. Randy Hillier: Anyway, going back to Mr. Balkissoon's comments: I understand your concern of that consistency, in your argument you put forward. What I don't understand is an acceptance and a reliance that the system will be expedited in any fashion. There's nothing in here that mandates a more expeditious process than what we have today. There's nothing dealing with those sorts of things, even though we often heard that from the deputants. Just having more categories of background checks does not, in and of itself, expedite the process.

It concerns me that there is a lack of interest or lack of priority for the undue hardship that it causes when people lose employment opportunities or have employment opportunities significantly delayed. We all understand that employment is essential for people. Financial independence is difficult to achieve for people if employment opportunities are denied.

I'm willing to go along with consistency. I'm willing to go along with all that sort of stuff. But why is the government not addressing the concerns raised about delays and loss of employment when we have such a less-than-stellar economic situation in Ontario's land-scape at the present time? I really believe it would be harmful and injurious to many people if we don't address this, and I'd rather see it addressed in the committee than waiting for another six months and having another clause or schedule added into an omnibus budget bill that few people read, that maybe tries to do another housekeeping—or another bill in its entirety, to house-keep stuff. These are significant concerns.

I'll reiterate once again: This was not a private business, Mr. Balkissoon. This was an industry association that made that presentation. They do more background checks than anybody. They probably would justifiably be viewed as subject matter experts in background checks, and we're going to disregard their insights? I think we are doing a disservice if we do.

The Chair (Mr. Shafiq Qaadri): Are there any further comments on PC motion 3 before we proceed to the vote?

Mr. Bas Balkissoon: No.

The Chair (Mr. Shafiq Qaadri): Fine. And just to function as a scrutineer, I remind, respectfully, that Mr. Hillier and Ms. Scott are authorized to vote on the PC side and Ms. French on the NDP side.

Those in favour of PC motion 3? Those opposed to PC motion 3? PC motion 3 falls.

Thank you for that bonus vote, Mr. Singh.

PC motion 4.

Interiection.

Ms. Laurie Scott: Scrutineer.

The Chair (Mr. Shafiq Qaadri): There should be no coercion or assistance. Voting is a fundamental right, and it should be executed alone. Mr. Singh, as a lawyer, I believe you understand that.

Mr. Hillier, PC motion 4.

Mr. Randy Hillier: We withdraw motion 4.

The Chair (Mr. Shafiq Qaadri): PC motion 4 is withdrawn. We move to government motion 5.

Mr. Jagmeet Singh: Mr. Qaadri?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Singh. Go ahead.

Mr. Jagmeet Singh: Just for a point of clarification, we were voting in unison as opposed to coercion. It was a unified vote.

The Chair (Mr. Shafiq Qaadri): It's hard to tell from here. It must be the angle and the lighting. But I'll accept that, Mr. Singh.

Mr. Balkissoon.

Mr. Bas Balkissoon: I move that subsection 2(2) of the bill be amended by adding the following paragraph:

"7.1 A search requested by a children's aid society for the purpose of performing its functions under subsection 15(3) of the Child and Family Services Act."

The Chair (Mr. Shafiq Qaadri): Thank you. Comments on government motion 5?

Mr. Bas Balkissoon: I think I've commented quite a bit on it already, Mr. Chair—unless my colleagues have a concern. I'm happy to answer.

The Chair (Mr. Shafiq Qaadri): Ms. French.

Ms. Jennifer K. French: Well, specific to subsection 15(3) of the Child and Family Services Act, unfortunately, because we don't have that document here to reference, I wondered if we could be provided with what that specifically is. Am I within my—

The Chair (Mr. Shafiq Qaadri): The question is before the floor.

Mr. Bas Balkissoon: As I explained before, and I hope my memory serves me right, there's a function where they hire their own employees within their organization. This would clarify that the search that is being requested here would be for providers of care to children who are vulnerable.

The Chair (Mr. Shafiq Qaadri): Ms. French, just to remind you, it is your right to invite other colleagues, meaning ministry officials, to weigh in as well.

Ms. Jennifer K. French: And while I appreciate what the government member is saying and offering—I

appreciate the reassurance—I would appreciate more the actual text. If I may request it, I would like to have that.

Mr. Bas Balkissoon: Unfortunately, I don't have it.

The Clerk of the Committee (Ms. Tonia Grannum): I can get it.

The Chair (Mr. Shafiq Qaadri): I presume you need this instantaneously or for—

Ms. Jennifer K. French: I would be really impressed, but no. I don't.

The Clerk of the Committee (Ms. Tonia Grannum): Prior to the vote.

Ms. Jennifer K. French: Prior to the vote would be sufficient.

The Chair (Mr. Shafiq Qaadri): So we take your request—oh, prior to the vote, so that is instantaneous. Fair enough.

Yes, Mr. Hillier.

Mr. Randy Hillier: I would like to move an amendment to that. It would be a much better amendment if it read, "I move that subsection 2(2) of the bill"—

The Chair (Mr. Shafiq Qaadri): I think, Mr. Hillier, though creative, that's not quite in order at this moment. *Interjections*.

The Chair (Mr. Shafiq Qaadri): Is it the will of the committee to postpone consideration of government motion 5 until materials manifest, and then we move on to other motions? Agreed? All right. We'll move to NDP motion—

The Clerk of the Committee (Ms. Tonia Grannum): No, we're going to move to section 3 of the bill

Mr. Shafiq Qaadri: Yes. Shall section 3, for which we have received no motions today, carry? Carried.

We'll now consider section 4, NDP motion 6. Ms. French.

Ms. Jennifer K. French: I move that section 4 of the bill be amended by adding the following subsection:

'Exception

"(2) Despite clauses 42(1)(f) and (g) of the Freedom of Information and Protection of Privacy Act, clauses 32(f) and (g) of the Municipal Freedom of Information and Protection of Privacy Act, and clause 4(b) of this act, a police record check provider shall not, in response to a police record check request, disclose any information about an individual that is contained in a special interest police entry in a Canadian Police Information Centre database or another police database maintained by a police service in Canada, to a government in Canada or in a foreign country, or to any agencies of that government, except as may be relevant to an active police investigation."

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? The floor is yours, Ms. French, and then we'll open it up.

Interjection.

The Chair (Mr. Shafiq Qaadri): Sure. Mr. Singh.

Mr. Jagmeet Singh: One of the things we've seen more and more is that information sharing between agencies has become a growing concern. If we're really

interested in protecting the privacy interests of an individual, it is paramount that that information is not shared between other agencies when there is no reason to do so. That's why it's important to ensure that this additional protection is included, so that we provide strong privacy protection to the people of Ontario.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. French.

Ms. Jennifer K. French: Certainly, as we've seen in the media—we have seen the Toronto Star look into this in terms of people's health records specific to mental health concerns. We would like this act to be strengthened and we feel that this would achieve that.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments? Mr. Balkissoon, NDP motion 6.

Mr. Bas Balkissoon: I understand my two colleagues' concerns, and I think many of us may share those same concerns, but, unfortunately, I see this motion outside the scope of this bill and outside the scope of provincial jurisdiction.

It would be better dealt with federally because we don't have much say with CPIC or foreign country information that is given out to them. If you understand the databases, we have control over municipal police, but we don't over federal jurisdictions.

I would say that it's inappropriate for us to be dealing with this. I don't know if you would see, Mr. Chair, that it's probably out of order.

The Chair (Mr. Shafiq Qaadri): NDP motion 6 is not out of order.

Mr. Singh.

Mr. Jagmeet Singh: It's important to clarify that municipally, city-wise and provincially, the OPP all have access to data and to databases. What they store in their own databases is what is at question here: That the information that they have, and whether it should be shared with other agencies; whether it should be shared with other agencies, nationally or internationally.

There is data that each individual police agency has, and our concern is that those individual agencies do correspond and do speak with other agencies outside of the province. They also, in some instances, speak with other agencies outside of the country. So the data that is controlled by those here in Ontario, we're speaking specifically in relation to that data—because in general, the entire act is speaking about releasing CPIC information, which is federal in nature; but the provincial government has authority over what the province will allow its agencies to release. So it's absolutely within the scope of the law.

If Mr. Balkissoon's argument was taken, then the entire act is not appropriate, because CPIC is not something that is a provincial matter. But it's the data that's controlled by the police agencies that we're speaking to. It's the data that's housed in this province that we're speaking to, and whether those agencies can release that information. That's the question. Because the provincial agencies can research and pull up information that is nationally held, but whether or not they release that

information is the question. That's why this motion is relevant, and that's why it's important.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. Once again to just clarify for my colleagues, as I notice some points of discussion: NDP motion 6 is in order.

Are there any further questions or comments? Mr. Hillier.

Mr. Randy Hillier: Yes. We're supportive of the NDP motion. The arguments that we just heard obviously don't have a whole lot of merit. The amendment is in order; it is within the lawful jurisdiction of Ontario to restrict who has access and what data is shared. This motion speaks directly to the intent of the legislation that we've heard through debate and through committee hearings. It constrains and restricts who has access to what data, and I think there's a thoughtful and purposeful caveat to the NDP motion, "except as may be relevant to an active police investigation."

There's nothing in the act right at the moment that covers this sharing, so I take Mr. Balkissoon at his word that he agrees with the premise of this amendment—his argument that he viewed it as out of order is not correct—so I would assume that the Liberal government will then support this amendment.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Once again, with triple confirmation: NDP motion 6 is currently and has always been in order.

We now have Ms. French.

Ms. Jennifer K. French: Thank you, and I didn't doubt for a second that it was in order, Mr. Chair.

I'm not going to reiterate what my colleague so eloquently said, but I'm going to perhaps put it in more common terms. I think, as people across Ontario were recognizing the concerns as they were trying to travel and were being stopped at the border, and their travel plans were being affected, people were finding out that their health records—their mental health challenges in the past—were able to be pulled up by US authorities. I think that the average person in Ontario wants to be reassured that all that can be done will be done to protect that information, which is none of anyone's business.

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So I think when Mr. Balkissoon says that we don't have much say in this, I would say that we do have some say and that we should take this opportunity to make this act as strong as it can be.

If there's an opportunity to prevent that personal health information from being shared, this is an opportunity. I would challenge the government to defend why that health information and personal information should still be accessible.

The Chair (Mr. Shafiq Qaadri): Are there any further comments from any side before we proceed to the vote on NDP motion 6?

Mr. Jagmeet Singh: Recorded vote.

The Chair (Mr. Shafiq Qaadri): Recorded vote. Once again, one can vote singly or in unison.

Ayes

French, Hillier, Scott.

Nays

Balkissoon, Martins, Naidoo-Harris, Potts.

The Chair (Mr. Shafiq Qaadri): NDP motion 6 falls. Mr. Arthur Potts: Chair?

The Chair (Mr. Shafiq Qaadri): Just a moment. Shall section—sorry. Go ahead, Mr. Potts.

Mr. Arthur Potts: Well, we can do the section first, but I have the text of 15(3) of the children's aid society act in front of me, if you're interested in me reading it into the record. We can do the section first, but if we can come back to government motion 5—

The Clerk of the Committee (Ms. Tonia Grannum): They're bringing a copy in.

Mr. Arthur Potts: You want to wait for that?

The Clerk of the Committee (Ms. Tonia Grannum): Yes.

Mr. Arthur Potts: Okay. I do have it in front of me.

The Chair (Mr. Shafiq Qaadri): I appreciate, Mr. Potts, your digital expertise. I think we'll wait for the written version.

Shall section 4 carry? Carried.

Again, the will of the committee: To date, we have received no amendment motions for sections 5, 6, 7, 8 and 9, inclusive. Therefore, can we consider sections 5, 6, 7, 8 and 9 together?

Interjections: Yes.

The Chair (Mr. Shafiq Qaadri): Shall sections 5, 6, 7, 8 and 9, as so named, carry? Carried. Thank you, committee members.

We'll now move to section 10, which is NDP motion 7: Ms. French.

Ms. Jennifer K. French: I move that subsections 10(4) and (5) of the bill be struck out and the following substituted:

"Application to judge

"(4) A police record check provider that determines that non-conviction information about an individual satisfies all of the criteria listed in subsection (2) shall, on notice to the individual, apply to a judge of the Superior Court of Justice in accordance with the regulations for a review of the determination.

"Review of provider's determination

"(5) The judge shall, after providing an opportunity to the individual and the police record check provider to be heard, conduct a review of the provider's determination in accordance with the regulations and decide whether all of the criteria listed in subsection (2) have been satisfied.

"Result of review

"(6) A police record check provider shall not disclose non-conviction information unless the judge decides that all of the criteria listed in subsection (2) have been satisfied." The Chair (Mr. Shafiq Qaadri): The floor is open for comments. Mr. Singh?

Mr. Jagmeet Singh: This is an important amendment. What it does is, when it comes to the period or the point in the time where there are exceptions to or exemptions from this bill, those exemptions include vulnerable people or vulnerable sector checks. When the circumstances of those exemptions arise, the people or the individuals who make the decision whether or not the exemption is met or not met are the police agencies themselves.

The issue with that is, it doesn't provide a transparent or accountable mechanism. So if I'm not involved in the process, I don't know why the determination was made. What were the reasons, what were the grounds, what were the prerequisites that resulted in the decision? Why did the decision come that my information needed to be disclosed?

What this amendment requires is that if there's a time where a police record check provider sees that, yes, the exemptions are met in this circumstance, there needs to be an additional step: An application has to be brought to a judge.

A judge provides an independent assessment of whether or not those criteria are satisfied. The judge looks at the case and says, "Okay, you're saying that these criteria are met. Let me now look at the evidence, let me look at the circumstances, and make an independent assessment."

It also includes an opportunity for the individual who is the subject of that record check to be able to provide evidence or to provide arguments and say, "Listen, it doesn't make sense. It has no connection to what I'm applying for. It doesn't actually have any bearing on the appointment" or the position or the job or the volunteer position.

This is very similar to what happens in other jurisdictions. In British Columbia, there is an independent tribunal that was set up. So, instead of setting up a tribunal, this amendment requires an application to be brought to a judge. Some might say, "Well, this is going to slow down the process." It's a lot better for the process to be slowed down than for a decision to be made that's going to be deleterious or negatively impact me. I'd rather that a decision be slow and actually benefit me than a decision be made right away by someone else without an independent set of eyes, and that decision might impact me negatively, because information is decided that needs to be disclosed, and then I may decide not to then apply for that position.

So any argument about delay is not relevant in this circumstance, because a delay is far better than a no. This provides for an accountable, transparent, independent decision-making process by which a judge will then look at the evidence and say, "Okay, this record, in these circumstances, can be disclosed."

The Chair (Mr. Shafiq Qaadri): Any further comments on NDP motion 7?

Mr. Bas Balkissoon: I hear my colleague, and I understand his viewpoint clearly, but unfortunately, the government will not be supporting his motion.

I will tell you that the criteria provided in the exceptional disclosure test in subsection 10(2) are factual and not legal, and therefore the police would disclose information based on the same criteria set out under the act as a judge would.

The exceptional disclosure process outlined in the bill was actually something worked out by the government and all the stakeholders, including the civil liberties groups, not-for-profit groups, privacy and policing sectors, based on the LEARN guidelines. They are satisfied with the current process as stipulated in the bill, since it considerably limits the police record check provider's discretion and requires the provider to narrowly and consistently apply the test to non-conviction records

It is important to note that individuals still have the option of a judicial review process. If they are unsatisfied with the results of the reconsiderations, the addition of this requirement for a judge to determine what information is released could also delay the process, as he admits. It also could raise the cost to that person who is making the request, or the individual who is making the request.

Mr. Chair, the government considers all these issues, and we're not prepared to support this major change to the bill.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Balkissoon, Ms. French?

Ms. Jennifer K. French: Again, as my colleague had already explained, the argument of delay—haste makes waste. It's an opportunity that it might slow the process to some extent but then have a better outcome.

To have a judge who would weigh evidence and make the determination of whether or not the criteria are satisfied is certainly a fair thing to ask for in reasonableness.

But also, to Mr. Balkissoon's point about recognizing exemptions, this amendment does recognize the exemptions under the act, and they would not be included. It takes that into consideration, in answer to your argument.

I would hope that you would re-evaluate and that you would reconsider and support this.

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon.

Mr. Bas Balkissoon: As I stated in my second-last comment, we see that if a person is unhappy with the reconsideration process, they still have the opportunity on their own to make that choice to go to a judge. It doesn't remove it.

Really, this is not something we see as necessary in the bill, because it changes the whole intent of what we started out with, and it also changes what we've agreed with all the people who were involved in all the stakeholder meetings. They were pretty happy with this and settled on it, so we don't see the need.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Balkissoon. Ms. French.

Ms. Jennifer K. French: While I appreciate that you have come to this decision in consultation with the various stakeholders, as have we—and the various civil

liberties groups are also in support of this motion that we're putting forward.

One of the things that we heard when the stakeholders came and spoke to us during submissions was that the LEARN guidelines have served as the foundation, obviously, for this, but recognizing that that decision-making authority to determine whether or not criteria are satisfied and therefore warrant an exemption, that that be an individual or a body that is removed, that there's a layer of removal there to allow for more transparency.

So I think your point that stakeholders support yours—stakeholders also support this amendment. In the interest of protecting civil liberties and privacy, I think this is a great idea and I would encourage you to support it.

The Chair (Mr. Shafiq Qaadri): Are there any further comments on NDP motion 7 before we proceed to the vote? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 7? Those opposed? NDP motion 7 falls.

Shall section 10 carry? Carried. Shall section 11 carry? Carried.

We now move to consideration of section 12. For PC motion 8, Mr. Hillier.

Mr. Randy Hillier: We will withdraw motion number 8.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. PC motion 8 is now withdrawn.

We now move to PC motion 9. Mr. Hillier?

Mr. Randy Hillier: We will withdraw number 9.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier.

Shall section 12 carry? Carried.

Shall section 13 carry?

Mr. Randy Hillier: No, you've got an amendment there.

Interjections.

The Chair (Mr. Shafiq Qaadri): Once again, shall section 13 carry?

Mr. Randy Hillier: Just a minute-

The Chair (Mr. Shafiq Qaadri): You have 13.1.

Mr. Randy Hillier: Oh, okay.

The Chair (Mr. Shafiq Qaadri): One more time, shall section 13 carry? I shall take that. Carried.

Section 13.1, a new section proposed with regard to PC motion 10. Ms. Jones.

Ms. Sylvia Jones: I move that the bill be amended by adding the following section—

Interjection.

The Chair (Mr. Shafiq Qaadri): Ms. Jones, I'm afraid you're going to have to yield the reading of PC motion 10 to one of your colleagues. It is not a personal slight; it is merely procedural.

Ms. Sylvia Jones: It's okay. Randy is a good reader.

Mr. Randy Hillier: On behalf of Sylvia Jones, I would be pleased to read the following amendment.

The Chair (Mr. Shafiq Qaadri): And Patrick Brown, I presume.

Mr. Randy Hillier: I move that the bill be amended by adding the following section:

"Additional copies

"13.1 When a police record check provider discloses the results of a police record check to the individual who is the subject of the request, the police record check provider shall provide the individual, on request, with up to five additional copies of the results at no charge."

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Ms. Jones?

Ms. Sylvia Jones: Thank you, Chair. The members of the committee may know that volunteerism is an issue that I am a strong proponent of. I have on a number of occasions introduced a private member's bill that ties nicely into the police record check act that we are amending.

Essentially what I am trying to do is to remove one of the barriers of individuals who want to volunteer for multiple organizations, which statistics show is actually the majority of Ontario and Canadian residents. This would in no way impact the value of the police record check; it just allows a person to use it and present it to multiple organizations.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones. Further comments on PC motion 10? Mr.

Balkissoon.

Mr. Bas Balkissoon: I want to say thank you to my colleague Ms. Jones. I've heard her on this issue before

and I think many of us support you.

Unfortunately—I think the staff has had some discussions with you and I think the minister has. I know the minister is committed to looking at it as part of his regulation process, how it can be achieved, because of the logistics of the validity of the record up to a certain date and how long after that date you can use it, the number of copies—and because we're dealing with municipalities across Ontario that issue these record checks, we need to communicate with them and come up with a process. So I believe the minister has given you his word that he's committed to finding a solution for you. I hope we can move this bill forward and not deal with this in the bill itself but deal with it in regulation. There are many of us who support you. We'll be there beside you talking to the minister, too.

The Chair (Mr. Shafiq Qaadri): Further comments on PC motion 10? Ms. French.

Ms. Jennifer K. French: This is certainly something we heard a lot during submissions: that costs can be prohibitive for people to be involved. So we do support the additional copies at no additional charge. It's something that we heard time after time from the various stakeholders.

While I appreciate the government saying that you support the spirit of this, let's leave, as you said, some of the logistics to regulations, like how long they would be good for, that sort of thing. I think we all understand that these would not be copies that would be good forever, that there would have to be time constraints applied, but that can be left to regulation. But the concept of

additional copies being provided, I think, is appropriate, in this case, to support and allow the details to be hashed out in regulations.

The Chair (Mr. Shafiq Qaadri): Ms. Jones.

Ms. Sylvia Jones: As I'm sure many members of the committee know, police record checks are date-stamped currently. If you want to leave some stuff to regulation, leave things like how long that police record check is valid.

As many of you who have listened to my debates in the chamber know, I'm also not a big fan of regulations, because regulations can change literally within days by two people's signatures. So I don't have the confidence of a regulatory promise when I see it in legislation. Our volunteer sector has been requesting this since I've been serving as a member and, I'm sure, well before then. So while I appreciate the discussions and the promise of working together, the reality is, a regulatory amendment or addition does not give me the same confidence.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: I think this is a good, thoughtful amendment that is consistent with what the committee heard during deputations and what we've heard through debate in the House. It disturbs me that we're seeing a willingness to diminish the very value and purpose and role of a committee in the parliamentary process, when committee members refuse to listen to and take under consideration the advice from the deputants who come forward to this committee. That is our role as parliamentarians, as legislators: to provide thoughtful advice, recommendations and amendments to bills, to make bills better. It is not the purpose or the responsibility or the role of ministries and administrators to create law. It is our role.

It does disturb me to see the Liberal members on this committee willingly participating in diminishing our role and the decline of parliamentary legislative responsibilities. Yes, it can be done by regulation, because this bill has a wide open section in it that allows the Lieutenant Governor in Council to make just about any regulation—and the ones that the Lieutenant Governor in Council didn't capture by regulation, then the minister will be allowed to make regulations. It does away with the purpose of Parliament, when we just allow others to make all the rules. That's our job.

The administration of government has no obligation to listen to stakeholders. They have no obligation to hold committee hearings. They have an obligation that is fundamentally different than a representative's role.

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The Liberal members have said that they agree with this in principle, that they think it's a good idea. We have heard from many deputants that this would be consistent in a manner to improve the failings of the existing laws. It really does disturb me to see members of the Liberal caucus so willingly throwing away their responsibilities to others who don't have that responsibility.

Let's do our job here. This is a good amendment. It will help people, it will help organizations, and it does

not detract or take away anything from the thrust and the purpose of this legislation.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Are there any further comments on PC motion 10? Seeing none, we'll proceed, then, to the vote.

Mr. Randy Hillier: Recorded vote.

Aves

French, Hillier, Scott.

Nays

Balkissoon, Martins, Naidoo-Harris, Potts.

The Chair (Mr. Shafiq Qaadri): PC motion 10 falls.

Colleagues, as you've seen, we have received to date no motions or amendments for sections 14, 15, 16, 17 and 18, inclusive. May I take it as the will of the committee to consider all of those sections as one block?

Shall sections 14, 15, 16, 17 and 18 carry? Carried.

I believe now we have received, as per Ms. French's request on government motion 5, the written, not digital, text of 15(3), which has since been distributed. I will therefore call the committee's attention back to government motion 5 in section 2. Once again, government motion 5, which as you know, we deferred, which is from section 2. Ms. French.

Ms. Jennifer K. French: I appreciate having a physical rather than digital copy. While I said earlier that I appreciated the reassurances of the government, I appreciate having it in writing, and now I do, so I am satisfied. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you. Just to follow that point, there is a technology pilot project which is pending final confirmation for the last 18 months. We're not entirely sure what the delay is, but perhaps we might one day graduate, like other Legislatures in this country, to digital media technologies.

Are there any further comments on government motion 5 before we proceed to the vote? Seeing none, we'll proceed. Those in favour of government motion 5? Those opposed to government motion 5? Government motion 5 carries.

Once again, this is back to section 2. Shall section 2, as amended, carry? Carried.

I now call our colleagues' attention back to section 19, which is PC motion 11. Mr. Hillier.

Mr. Randy Hillier: I move that subsection 19(1) of the bill be amended by striking out "12 or 13" and substituting "12, 13 or 21".

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Any comments?

Mr. Randy Hillier: I'd love to comment.

The Chair (Mr. Shafiq Qaadri): Please do.

Mr. Randy Hillier: This amendment is very simple. It makes the obligations that are contained in the bill under section 21 a true obligation. It includes it in the portion of

the bill that recognizes it's an offence not to comply with the obligations of this bill.

At the present time, without this amendment, the minister is obligated to conduct a review within five years, but there is no consequence if he does not do a review. And as we have seen in the past, an obligation or a law that has no consequence is not, in actuality, an obligation or a law. If there is no consequence, it is not an obligation and it is not a law.

Unfortunately, we have seen this Liberal government not adhere to and abide by its statutory obligations. I don't know if the Liberal members would like me to reiterate all the statutory obligations that their ministers have not abided by. There is one little one about deleted emails that comes to mind. There are a few others. But as we saw, when those statutory obligations were not adhered to and there was no consequence, the government then came back and amended that bill so that there would be a consequence.

I'm pre-empting any failure of any minister from any colour that when it says, "The minister shall conduct a review" that there's a consequence if they don't—nice and simple.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Further comments to PC motion 11? Mr. Potts.

Mr. Arthur Potts: The hijinks of the member opposite never cease to amaze me. I, personally, think that on our side of the House we have a lot more respect for the electorate, that the consequences of not doing our job is reflected at the ballot box. To even make a consideration that a consequence should be to fine a minister or put him in jail is quite laughable. We will be voting against this.

The Chair (Mr. Shafiq Qaadri): Echoing your call for respect for the minister, I would also just invite respect with regard to language, Mr. Potts.

Mr. Arthur Potts: Apologies.

The Chair (Mr. Shafiq Qaadri): Are there any further comments? Mr. Hillier. PC motion 11.

Mr. Randy Hillier: It's unfortunate that the member from Beaches-East York didn't read the legislation or understand the amendment. There is no jail provision included in the bill. It is a monetary penalty should anybody violate this portion of the act.

I will state this—it will come forward in subsequent amendments, but I'll bring it to the member's attention right now—there are other portions of this bill that allow the Lieutenant Governor in Council to exempt anybody from any provision in this bill. That's an important element to allow the Lieutenant Governor in Council to exempt any person or any classes of persons from any portion of this bill.

I'm suggesting that putting this amendment in would limit the minister's potential to exempt himself or herself from the requirements of the statute. It's not hijinks; it's good law.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Any further comments before we proceed to vote on PC motion 11?

Seeing none, those in favour of PC motion 11? Those opposed to PC motion 11? PC motion 11 falls.

PC motion 12: Mr. Hillier.

Mr. Randy Hillier: I move that subsection 19(3) of the bill be struck out.

This is one that I've raised in debate in the House; it was also raised during the committee hearings. I've requested a response during those debates. I've yet to hear a valid response, but presently, 19(3) reads:

"No prosecution without consent

"(3) A prosecution shall not be commenced under this section without the minister's consent."

This is a far-reaching and very unique clause. Generally, and I think everybody on all sides of the House will agree, political consent is never required for a prosecution to be commenced. We would never say to the chief of police, "Before you charge somebody with any offence, you have to come and get political approval before that charge is laid."

1510

I am not sure what the rationale is. If there is a rationale, I'd be very happy to hear it. I've requested it. The government side has been silent in that request to explain why, under this statute, any violation of the provisions of this bill must be approved first by the minister.

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon.

Mr. Bas Balkissoon: I would say that this particular section is being included in the bill because it mirrors the requirement set out in subsection 81(4) of the Police Services Act. It gives the Minister of Community Safety and Correctional Services the power to determine if prosecution for contravention of the act should be commenced.

I would say to you, as the government, similar pieces of legislation have these examples. There is the Attorney General, under the Freedom of Information and Protection of Privacy Act. The Minister of Government Services has the same, in the Corporations Information Act. If you think about the Election Act and the Election Finances Act that we all run under, similar authority is given to the Chief Electoral Officer.

Similar clauses exist in many pieces of legislation in the province. We, as the government, see it as just one added piece to the legislation, and it's necessary. So we will not be supporting Mr. Hillier's motion.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier, then Ms. French.

Mr. Randy Hillier: I heard a bunch of words, but I didn't hear any justification.

Let me just give you this example, Mr. Balkissoon. We know that under this legislation, all the background checks initially start with police services. Generally, that's what we're looking at.

Under this provision, if an individual found out that a police service, or some other service or some other provider, released information contrary to this act, then at the present time, under general law, they would be able to go to the crown or to the police, lay out their case and

seek prosecution. Failing that, they could also lay private information directly with a justice of the peace, to have that offence heard within court.

This 19(3) takes away the ability for an individual to bring and identify an offence independently. That person would have to seek ministerial consent for a prosecution or laying of charges.

I just don't understand why we would take away a person's inherent right to lay private information if they feel that their background information has been shared or released improperly and against this act. Surely this is about protecting people and restricting improper sharing of personal and private information. Now an individual who faces that potential has to wind his way through Queen's Park and find the minister and get the minister's consent? I just don't buy it. I can understand, with some pieces of legislation, having independent officers in unique situations, like electoral financing and stuff. But this is dealing with private individuals, their private information, and taking away their ability to bring a prosecution forward.

The Chair (Mr. Shafiq Qaadri): Ms. French.

Ms. Jennifer K. French: I support this, because as we have currently written in this bill, that sole discretion is given to the minister or designate. That's a lot of power.

I take your point, Mr. Balkissoon, that we see this in other pieces of legislation and this is not the first time this has been written into an act. But I think this act, specifically, has to be considered very differently. This is a very important act that addresses civil liberties issues, privacy issues, sensitive issues. It's very important. To allow the minister to trump any other decision, that it falls on an individual to determine whether or not prosecution of contravention of the act can proceed—that doesn't sit well. It's in keeping with what we're seeing here at committee. I think that this act came out of a very public need for protection.

I mentioned earlier that there was that Toronto Star exposé, the series of articles, and people realized that their personal information was not being protected; that their health histories and mental health struggles were not being protected. That's why we're here.

We've already seen that the government has shot down NDP motion 6 that sought to protect those health records and keep them private and keep them from other authorities; PC motion 10—that was listening to stakeholders and saying that the cost of these record checks is a challenge. So when we're talking about protecting the public, whether their information or their pocketbooks, in this case—but to Mr. Hillier's point, if it's about protecting people, you're not going about it the right way.

We've had opportunities here today to make things right, to make this a stronger bill. I think we have another opportunity here, with PC motion 12, to strike this and not give this sole discretion to the minister, because this is not a similar piece of legislation. This is a really important piece of legislation that I think should be treated accordingly.

The Chair (Mr. Shafiq Qaadri): Further comments on PC motion 12 before we vote? Mr. Hillier.

Mr. Randy Hillier: I gave that one example of laying out of private information that would be prevented. If one of the businesses of the National Association of Professional Background Screeners violated this, the individual just can't go to a police service and ask them to investigate; that police service has to go to the minister to seek consent.

I just find it unbelievable. I still have not heard any rationale why we should prevent people from being able to protect themselves and using the law to protect themselves, and to seek a remedy from an offence under the law. It's inconceivable that we would prevent people from using the law to seek a remedy for a violation of their privacy, of the sharing of information, and that we vest all that authority into the minister. That's just unacceptable. We wouldn't allow it under any other circumstances when it deals with an individual. That's what this is all about: an individual's personal and private information.

1520

I do believe there were also comments along these sorts of lines with respect to the minister's authority that the committee has received from the Information and Privacy Commissioner. The Information and Privacy Commission has identified that this whole basket of authorities that are vested into the minister is a significant concern. That's on page 6 of the committee's brief on the hearings, the deputations and the written submissions we've received.

There are people, independent officers of this Parliament and others, who understand that the law is to be there to provide a remedy for people, not to prevent them from seeking a remedy unless the emperor agrees. Surely, Mr. Balkissoon, you'd have some insight as to why the Liberal government wants to prevent people from using this statute to protect their privacy and the sharing of personal information.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Any further comments on PC motion 12?

Mr. Randy Hillier: I want it on the record that the Liberal members of this committee have refused to identify any justification for restricting people using the law to find a remedy. They have no concern, no interest in helping people to use the law to protect themselves, and they are abrogating people's fundamental rights to protect themselves under the law.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Any further comments before we proceed to the vote on PC motion 12? Seeing none, we'll proceed to the vote.

Mr. Randy Hillier: Recorded vote.

Ayes

French, Hillier, Scott.

Nays

Balkissoon, Martins, Naidoo-Harris, Potts.

The Chair (Mr. Shafiq Qaadri): PC motion 12 falls. PC motion 13: Mr. Hillier.

Mr. Randy Hillier: Seeing that amendment 12 has been defeated, I will withdraw amendment 13.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier.

Shall section 19 carry? I heard a no. Those in favour of section 19 carrying?

Mr. Randy Hillier: Recorded vote.

Ayes

Balkissoon, Martins, Naidoo-Harris, Potts.

Nays

French, Hillier, Scott.

The Chair (Mr. Shafiq Qaadri): Section 19 carries.

We have received no motions or amendments for section 20. Shall section 20 carry? Carried.

We proceed now to section 21, PC motion 14. Mr. Hillier.

Mr. Randy Hillier: I move that section 21 of the bill be amended by adding the following subsection:

"Tabling

"(2) The minister shall table the review in the Legislative Assembly within 30 days of its completion."

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. The floor is yours.

Mr. Randy Hillier: I think it's once again clear. The statute provides and states, "The minister shall conduct a review of this act within five years after the day this section comes into force," but it provides no obligation on behalf of the minister to table that review, to make it public or to share it with anyone. This amendment is one that we see, most often not—to have a review done but not have it obliged to be shared amounts to not having a review. This makes the review mandatory to be shared in an open and transparent fashion, consistent with the minister's mandate letter.

The Chair (Mr. Shafiq Qaadri): Comments on PC motion 14? Ms. French.

Ms. Jennifer K. French: This is certainly a reasonable amendment. To have a timeline be tabled in a timely way only makes sense. This, I'm sure, is something the government can support since it reassures us on a regular basis that the government is very accountable and transparent. This is an opportunity for them to put their money where their mouth is and ensure that that accountability translates, as I said, into a timely timeline for this act.

The Chair (Mr. Shafiq Qaadri): Further comments? Mr. Bas Balkissoon: If you look at this process from the beginning to the point where we're at, the ministry and the minister have done exceptional work with the public to get here, and I believe we will continue to work with the public and all our stakeholders to support the implementation, the evaluation and the fine-tuning of the process as it goes forward.

We're also committed to broad and open communications with the public, as we have been in the last little while. Once a review of the act is completed, the minister will share the review findings publicly with all the stakeholders in a broad and accessible manner that is consistent with the principles of open government.

Putting in this 30-day time frame is not something that we're supportive of. We don't see it as necessary, and the requirement to table is sort of inconsistent with provincial statutes gone by. I think at the very end my colleague made a comment that it's up to the public to make that decision, whether we're doing a good job or a bad job when election time comes around.

The Chair (Mr. Shafiq Qaadri): Any further comments? Mr. Hillier.

Mr. Randy Hillier: I'm astonished—astonished and very disturbed at those comments. For all reviews, all reports, the default position is to table them in this House. The Auditor General's report, a review of public accounts; the Ombudsman's report; and the host of hundreds of agency, boards and commissions all have statutory requirements to make them public.

Mr. Balkissoon said they will consult broadly with stakeholders. That sounds to me like we're going to share what we want with whom we want, not open or public or transparent, but hidden behind very secure doors.

I think this is important. It's brand new legislation. We're not sure how it's actually going to work out. We're all hopeful that it will achieve the ends we believe it is meant to achieve, but without public oversight and an opportunity to review the data collected and how it worked amounts to no review at all—no review.

I understand there are many members in the Liberal caucus who turn a blind eye and turn their backs to their responsibilities. However, they're turning their backs and turning a blind eye to their constituents. In five years' time, did this act achieve what we wanted it to achieve? Did we expedite the processes? Did we make the system less costly? Did we diminish and remove those impediments and obstacles to employment? Were there prosecutions?

But the minister did not act upon a whole host of items that are essential for legislators to determine if there needs to be any amendments or any improvements. How can we possibly offer up suggestions to improve legislation if the government refuses to table the review of the legislation? I think it's abhorrent that the members in this committee would be so cavalier in disregarding their responsibilities to their constituents.

The Chair (Mr. Shafiq Qaadri): I'm not sure that any more adjectives are left, but in any case, I do call for temperate language all around.

Are there any further—Mr. Potts.

1530

Mr. Arthur Potts: Yes. I want to respond to the intemperate language—no, I don't, actually.

I take your concern with this very seriously. This is a very interesting new piece of legislation which we're trying to meet certain objectives to. There are other

venues within our government in the policies we brought forward—accountability, the Auditor General's office—if there were concerns.

But I want you to know and I assure you that I'm going to be watching this very carefully because there are pieces in this which concern me, particularly around timelines and deadlines that I worry that we may be jamming up the employment applications in timelines. I take the concerns of Rod Piukkala and my constituent Todd Anstey very seriously. These are the guys from the National Association of Professional Background Screeners who presented at the public hearings. I take their concerns very seriously.

I'm hoping that we got it right, that in fact once that individual gets their note, they're going to file it off quickly to where it needs to go so they won't stand in the way of their prompt employment and that their concern of time delays won't happen.

So I will be watching it. If there are any concerns like that, you can rely on me that we will make sure that we get the review and we'll make it as public as we possibly can.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts. Ms. French, then Mr. Hillier.

Ms. Jennifer K. French: As Mr. Balkissoon had mentioned, that the government sees itself as broad and accessible, and to Mr. Potts's point about engaging on a broad public scale: I think that by looking at section 21 and committing to conduct a review within five years—fine. By why be afraid to actually table the timeline of when people can look forward to that review? Because I think as we saw, there were a number of interested stakeholders who wanted to speak to this.

As this act takes effect and is having an impact on various groups and individuals, or not enough as the case may be, we want that feedback. We want to hear from the public. We actually want it and encourage it and aren't just going to talk about it. I think that by establishing that timeline, then the broader public can know when they can look forward to being an active part of that review process. I think that that would actually speak to what you claim, which is broad and accessible legislation.

I take exception, though, when we hear that if the public doesn't like it, well, as we heard earlier, then they can just wait to vote and stuff their frustrations in a ballot box. I think that there has to be a middle ground certainly before that point where we engage and reassure the public that they can engage, whether that means—not in this case—travelling a bill or holding consultations for longer periods of time, actually inviting and encouraging people to participate in the process at every opportunity, I think that setting out an actual timeline would encourage that engagement.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. Mr. Hillier.

Mr. Randy Hillier: Again to Mr. Potts's comments: He agrees that the concerns that I've raised, the concerns that I've heard from some of his constituents, are valid concerns and Mr. Potts has said, "Leave it to me"—leave

it to Mr. Potts to watch over this government. He has asked us to rely strictly on Mr. Potts, the member from Beaches-East York, to hold the government to account.

I don't know why he wouldn't want to share that great burden with other members of the assembly and allow us to hold the government to account as well and share in his endeavour. I think it's completely false to ask or expect all other members of this House to be kept in the dark, to be prevented from seeing valuable information, but rely on Mr. Potts to do it for us. I think Mr. Potts has a great many fabulous qualities, but I fear that the burden of keeping this government to account would be too great even for his stature, and it would be medically harmful to him.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier-

Mr. Randy Hillier: No, this is serious; this is important. It is exceptionally important that all members—I have constituents as well, and what am I to say to them? I'm not allowed to look at the government in review? I have to wait on Mr. Potts? Or maybe Mr. Balkissoon will take up the charge, if it's too great for Mr. Potts to do it on his own. I will come begging and pleading: "Share with me, please, the review. Let me know what I can say to my constituents"? Isn't that an abhorrent view of how a representative parliamentary democracy is supposed to work?

I see Mr. Potts is chuckling and finds this humorous. I don't find it overly humorous that the government is purposely preventing members of this assembly from seeing and acting upon a review that's taken in secrecy and prevented from being shared with all members of this House. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Are there any further comments on PC motion 14 before we proceed to the vote?

Mr. Randy Hillier: Recorded vote.

The Chair (Mr. Shafiq Qaadri): Recorded vote.

Ayes

French, Hillier, Scott.

Navs

Balkissoon, Martins, Naidoo-Harris, Potts.

The Chair (Mr. Shafiq Qaadri): PC motion 14 falls. Shall section 21 carry? Carried.

We now have four motions for section 22, beginning with PC motion 15: Mr. Hillier.

Mr. Randy Hillier: I move that section 22 of the bill be struck out and the following substituted:

"Regulations

"22. The Lieutenant Governor in Council may, with the consent of the Legislative Assembly, make regulations exempting any person or class of persons from any provision of this act and attaching conditions to the exemption." For clarification, the existing bill allows the Lieutenant Governor in Council to exempt any person or any class of persons from any provisions of this bill—not any provision, but a significant number of provisions.

I've included in this amendment that if the Lieutenant Governor—if cabinet chooses to exempt classes of people, or people, from the provisions of this bill, that they must seek the consent of the Legislature before doing so.

Again, this is very consistent and in line with the roles and responsibilities of a parliamentary democracy. Before the law is changed, the law and people are safeguarded by way of debate in the House.

If the minister wants to choose to exempt the member from Beaches-East York, or any other class of people, from this legislation, he would first have to put it to a vote in the Legislature.

I think we've covered a good section in this bill. We've made exemptions for children's aid societies and others. I'm not really sure who else we may want to exempt, or what classes of people we may want to exempt. But if we do want to do that, it should be first brought forward to the Legislature and articulated to the Legislature, what the purpose and the rationale are of exempting persons or classes of persons from this act.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier.

Just before I open the floor for comments on PC motion 15, I'd just respectfully inform my colleagues that we will be entering sudden death overtime at exactly 4 p.m., at which point those motions that have not been dealt with will have been deemed to have been presented to the committee, and we will be voting on them once I name them by number only. That's at 4 p.m., which is in 20 minutes exactly.

1540

The floor is now open for PC motion 15. Comments? Mr. Balkissoon.

Mr. Bas Balkissoon: I'll be quick. Regulation-making authority exists today to clarify provisions to support or enable proper implementation of legislation passed by the government. It's a process that all of us are familiar with.

I would say what my good friend on the other side is trying to do here is implement a completely new process in our Legislative Assembly and unfortunately we on the government side cannot agree with him at this time.

We would ask you to take the vote.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments on PC motion 15? Mr. Hillier.

Mr. Randy Hillier: It's unfortunate that Mr. Balkissoon doesn't have quite an understanding of convention and tradition. It is the obligation and it is the responsibility. I'm not suggesting that we fundamentally change how democracy works; I'm actually requesting that we adhere to the fundamental traditions and conventions of a legislative body.

Let me just read from section 22, the comments from the Information and Privacy Commissioner. It says here that as these regulation-making powers have the potential to substantially alter rights and duties under the act, they should only be exercised following a public consultation process.

Bill 113 should include a public consultation provision on the regulations. That's what this is saying. I'm suggesting the most appropriate body for public consultation is the Legislative Assembly. Bring forward your legislation so that it is consistent with the Information and Privacy Commissioner's concerns and have it consistent with the traditions, conventions and responsibilities of a Legislative Assembly.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Are there any comments further on PC motion 15 before we vote?

Mr. Randy Hillier: Recorded vote.

Ayes

Hillier, Scott.

Nays

Balkissoon, French, Martins, Naidoo-Harris, Potts.

The Chair (Mr. Shafiq Qaadri): PC motion 15 falls. We now move to government motion 16. Mr. Balkissoon.

Mr. Bas Balkissoon: I move that clause 22(1)(b) of the bill be struck out.

The Chair (Mr. Shafiq Qaadri): Thank you. Any comments?

Mr. Bas Balkissoon: This is technical in nature. There is an inconsistency between subsection 10(4) and clause 22(1)(b) with regard to the regulation-making authority governing the reconsideration process. Subsection 10(4) states that reconsideration requirements may be prescribed by the minister while clause 22(1)(b) authorizes the Lieutenant Governor in Council to do so. So, really, we're trying to correct an inconsistency in the draft bill.

The policy intention is to provide this regulationmaking authority to the minister and not to the Lieutenant Governor in Council, given that any additional requirements related to the reconsideration process are procedural in nature and regulation-making authority over procedural matters is often assigned to the minister.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Balkissoon. Mr. Hillier.

Mr. Randy Hillier: It's unfortunate that the Liberal members are inconsistent in addressing the inconsistencies of the bill. We've identified a number of inconsistencies in the bill and they have all been rejected by the Liberal members.

This, although it may be a technical problem, alters the regulation-making powers from the Lieutenant Governor in Council to the cabinet. It's a pretty minor inconsistency. It addresses an inconvenience for cabinet or for the minister. They're certainly very willing to make life more convenient and consistent for the minister, but willing to impose hardships on people by preventing them from seeking prosecutions under the act.

It's very inconsistent in their approach to addressing inconsistencies.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Further comments on government motion 16, if any? If not, we'll proceed to the vote. Those in favour of government motion 16? Those opposed? Government motion 16 carries.

We're now on to NDP motion 17. Ms. French.

Ms. Jennifer K. French: Thank you, but seeing as how motion 16 was successful, I withdraw.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. We now move to government motion 18.

Mr. Bas Balkissoon: I move that subsection 22(2) of the bill be amended by adding the following clause:

"(d) governing the process for conducting a reconsideration under section 10."

The Chair (Mr. Shafiq Qaadri): Are there any comments on government motion 18?

Mr. Bas Balkissoon: Similar—there's an inconsistency. This is technical in nature between subsection 10(4) and clause 22(1)(b) with regard to the regulation-making authority governing the reconsideration process. Subsection 10(4) prescribes that to the minister; clause 22(1)(b) authorizes the Lieutenant Governor in Council, and so this is a technical correction.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Balkissoon. Are there any further comments, colleagues, on government motion 18? Seeing none, we'll proceed to the vote. Those in favour of government motion 18? Those opposed to government motion 18? Government motion 18 carries.

Shall section 22, as amended, carry? Carried.

To date, we have not received any motions or amendments for sections 23, 24, 25, 26, 27, 28, 29 inclusive. May I take it the will of the committee to consider those on block? Shall those sections, so named, carry? Carried.

Shall section 30, the commencement, carry? Carried. Shall section 31, the short title, carry? Carried.

Shall the schedule carry? Carried.

Shall the table authorizing disclosure carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 113, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

Thank you, colleagues, for your co-operation. I regret that, despite the fact that we had allocated time until 9:45 p.m. this evening, we shall sorely miss you in those deliberations.

COMMITTEE BUSINESS

The Chair (Mr. Shafiq Qaadri): Is there any further business before this committee?

Mr. Arthur Potts: Yes, sir.

The Chair (Mr. Shafiq Qaadri): Mr. Potts.

Mr. Arthur Potts: My motion, Chair: I would like to move that the committee meet during its regularly

scheduled times on Thursday, November 26, for the purpose of public hearings on Bill 109, An Act to amend various statutes with respect to employment and labour.

- (2) That the Clerk of the Committee post information regarding public hearings on the Ontario parliamentary channel, the Legislative Assembly website and on Canada NewsWire.
- (3) That interested parties who wish to be considered to make an oral presentation contact the committee Clerk by 12 noon on Tuesday, November 24, 2015—

The Chair (Mr. Shafiq Qaadri): Mr. Potts, let me just interrupt you. Let's just distribute this, and then I'm going to have you reread it once the—

Interjection.

Mr. Arthur Potts: No. We don't have time to do that. We'll do it—

Interjections.

The Chair (Mr. Shafiq Qaadri): Do I take it that the will of the committee is that we defer it to a subcommittee, or shall we deal with this currently?

Mr. Arthur Potts: No, we have no time for sub-committee. We want to get this forward quickly. We've got a lot of work to do and we don't want—

The Chair (Mr. Shafiq Qaadri): All right. I need to take a vote on this. Those in favour of adjourning this motion to the subcommittee, please raise their hands currently. Those in favour of dealing with this motion as of this moment? All right. So the committee is still in session.

Has everyone received a written—not digital—copy of this motion?

Interjections.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier, I believe it was officially handed to you nine seconds ago. We can give you one more copy.

Mr. Randy Hillier: I say let's have a recess for 20 minutes.

The Chair (Mr. Shafiq Qaadri): That is your right. We can recess for 20 minutes.

There is a 20-minute recess in effect now.

The committee recessed from 1550 to 1610.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We're back in session. Mr. Potts, now that the motion has been handed out, please enter it into the record

Mr. Arthur Potts: Thank you, Chair. I move:

- (1) That the committee meet during its regularly scheduled times on Thursday, November 26, 2015, for the purpose of public hearings on Bill 109, An Act to amend various statutes with respect to employment and labour.
- (2) That the Clerk of the Committee post information regarding public hearings on the Ontario parliamentary channel, the Legislative Assembly website, and on Canada NewsWire.
- (3) That interested parties who wish to be considered to make an oral presentation contact the committee Clerk by 12 noon on Tuesday, November 24, 2015.

- (4) That the Clerk of the Committee schedule the interested parties wishing to appear before the committee in a first-come, first-served manner.
- (6) That all witnesses be offered five minutes for presentation and nine minutes total for questioning, divided evenly by committee members on a rotation by caucus.
- (7) That the deadline for written submissions be 6 p.m. on Thursday, November 26, 2015.
- (8) That amendments to Bill 109 be filed with the Clerk of the Committee by 12 noon on Monday, November 30, 2015.
- (9) That the committee meet for clause-by-clause consideration of Bill 109 on Thursday, December 3, 2015.

I so move.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts. This motion is now open for both comments as well as amendments.

Mr. Randy Hillier: At the request of the Chair, to be recognized?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Hillier. Go ahead.

Mr. Randy Hillier: I would like to move an amendment to item (6): "That all witnesses will be offered 10 minutes for presentation" and—well, we'll leave that one for the time being.

The Chair (Mr. Shafiq Qaadri): Fine. So we'll just distribute this in writing, at least one copy per caucus, I think, unless members can absorb that.

Mr. Arthur Potts: Chair, we recognize that as a friendly amendment and we've made the adjustment on our own copy.

The Chair (Mr. Shafiq Qaadri): We certainly accept your friendship, but I'm still distributing it in writing.

Mr. Arthur Potts: I can pull it up on my cellphone, if you like, Chair.

The Chair (Mr. Shafiq Qaadri): You continue to be impressed by your digital capabilities, as we all are, but I am still doing it in writing. Thank you, Mr. Potts.

Ms. French.

Ms. Jennifer K. French: Well, I would also like to offer a friendly amendment.

The Chair (Mr. Shafiq Qaadri): You're absolutely entitled to do so, Ms. French, just once we dispose of this

Ms. Jennifer K. French: Dispose of or-

The Chair (Mr. Shafiq Qaadri): Entertain, vote on, accept, reject.

Ms. Jennifer K. French: I just thought it was a little premature to say we would dispose of it before we've had a chance to discuss it.

Mr. Randy Hillier: Typically the Liberals do dispose of an opposition amendment, but today they're going to dispense with it.

The Chair (Mr. Shafiq Qaadri): Deal with.

Ms. Jennifer K. French: Well, perhaps the Chair could advise—

Interjections.

The Chair (Mr. Shafiq Qaadri): All right. Mr. Hillier's motion will now be distributed by our highly able and furiously writing Clerk of the Committee, one per caucus, so that we're completely clear as to what we are voting on, as per protocol.

Ms. Jennifer K. French: So if I support this, does it

mean I support the rest of this?

The Chair (Mr. Shafiq Qaadri): No.

Ms. Jennifer K. French: Good. Just checking.

The Chair (Mr. Shafiq Qaadri): Not necessarily.

Ms. Jennifer K. French: Yes. I'd like to be very clear that I do not support the rest of this.

The Chair (Mr. Shafiq Qaadri): All right, colleagues. I think you all have Mr. Hillier's amendment with reference to five to 10 minutes, which is in item (6). Are there any further comments before we proceed to the vote on this amendment?

Seeing none, those in favour of Mr. Hillier's amendment? Those opposed? Mr. Hillier's amendment carries, and it officially encodes now 10 minutes.

The floor is now back open for the entire motion or any amendment to that motion.

Ms. Jennifer K. French: Perhaps the Chair can advise: I have a number of thoughts on the amended motion before me, so I would like to discuss that, and if the government would like to amend their own—

Interjection.

Ms. Jennifer K. French: You're not going to?

Mr. Arthur Potts: No. We can't.

The Chair (Mr. Shafiq Qaadri): You're welcome to comment. If you have a formal motion, please present it now. It's your call, whether you'd like to confer with our colleagues and see if they would absorb it or not.

Mr. Arthur Potts: Get your concern on the record.

Ms. Jennifer K. French: Oh, I'll get my concern on the record. I'll start with a friendly discussion.

My concern with this motion is the time constriction here, and while I appreciate the government's willingness to allow witnesses to speak for 10 minutes, I am concerned because with this bill—as we know, it's a three-parter. I think we would want to make sure that everyone who could strengthen this bill and who could come and be a witness on this, that we want to give them a chance to actually come, whether that's in terms of the WSIB sections of this bill, the firefighters and really anyone from the house of labour.

To that end, I know that next week is the convention for the Ontario Federation of Labour, so I know that a number of the stakeholders—or I would anticipate that interested stakeholders would likely have a conflict and would not be able to attend. Perhaps I'm wrong, but I would encourage this government to push this back a week or to add a day, if possible, of hearings.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. Any comments, Mr. Potts?

Mr. Arthur Potts: I certainly take the member's concern very seriously. I know our friends at the Ontario Federation of Labour would be wanting to come to speak to aspects of this bill, and I'm quite certain that they'll be

able to carve enough time out of their convention to have a few spokespeople come through, but I recognize that it was totally inadvertent. There was no deliberate attempt to do it with this timing. We respect very much the input that they will have at this stage, but unfortunately we really can't push this back a week, if we want to get this done before the end of the Christmas session.

The Chair (Mr. Shafiq Qaadri): Thank you. The floor is open for comments. Mr. Hillier.

Mr. Randy Hillier: I, as well, have some concerns about being able to get everybody in who may have an interest in speaking to this bill by next Thursday. I'll offer up an amendment for the committee to consider, and that would be in clause (1): "That the committee meet during its regularly scheduled times on Thursday, November 26, 2015, and the subsequent sitting date, December 3, 2015, if required."

Ms. Jennifer K. French: I support this.

The Chair (Mr. Shafiq Qaadri): Our able Clerk is furiously transcribing that amendment in triplicate.

Mr. Randy Hillier: That amendment would also affect clause (9), so clause (9) would be altered to: "clause-by-clause consideration of Bill 109 on Thursday, December 3, 2015, or Thursday, December 10, 2015, if required."

Interjections.

Mr. Randy Hillier: I think the motion covers it's only if there's a requirement—if there's a greater amount of deputants than what could be handled in the one sitting day.

The Chair (Mr. Shafiq Qaadri): All right. Transcription, distribution pending—

Ms. Jennifer K. French: However, if there are schedule problems—in fairness, if somebody cannot come—

The Chair (Mr. Shafiq Qaadri): That's fine. We're in a five-minute recess till we're back.

The committee recessed from 1620 to 1627.

The Chair (Mr. Shafiq Qaadri): Thank you, committee members. We're now back to consider Mr. Hillier's amendments. I'd ask Mr. Hillier to please read it again so that we can be both literally and figuratively on the same page.

Mr. Randy Hillier: Thank you very much, Chair. I'm going to read it out with modifications because I don't think the motion as written encapsulates exactly what I was looking for, but I'll read this and include the changes as I go through.

That clause (1) of the motion be amended to read "That the committee meet on November 26, 2015, and, if necessary, December 3, 2015, during its regularly scheduled meeting times for the purpose of public hearings on Bill 109."

And that clause (9) of the motion be amended to read "That the meet committee for clause-by-clause consideration of Bill 109 on Thursday, December 3, 2015, if public hearings have ended, or Thursday, December 10, 2015."

That's just the first portion.

The Chair (Mr. Shafiq Qaadri): All right. I think the motion is comprehensible if not immediately clear from what's written. In any case, are we okay? Everyone understands and is clear with the motion there?

Mr. Arthur Potts: Yes, we're clear.

The Chair (Mr. Shafiq Qaadri): All right. Those in favour of Mr. Hillier's amendments just read?

Mr. Randy Hillier: Everyone. Everyone.

The Chair (Mr. Shafiq Qaadri): Never presume. All those in favour?

Mr. Randy Hillier: I saw Art's hand up.

The Chair (Mr. Shafiq Qaadri): Okay, let's just take it again, please. Mr. Hillier has moved these amendments to the main motion. Those currently in favour, please raise your hands now. Those opposed to these motions? This, Mr. Hiller, falls.

The floor moves back to the main motion as originally read by Mr. Potts and amended, clause (6), from five to 10 minutes.

Are there any further either comments, amendments or motions? Ms. French?

Ms. Jennifer K. French: Well, I would like to be very clear on the record here to say that while we've heard talk today of this government being broad and accessible, here again we have a case of excluding voices. We've only got a four-hour window on Thursday, November 26, to hear from stakeholders on a bill that addresses three very separate areas of focus, three very separate amendments.

What we would like to see is the consultation process being broader. The member from Beaches-East York claimed that this was an inadvertent scheduling conflict, that many of our partners from labour who have a conflict—I can't speak for them; maybe they can attend, perhaps they can carve out time. I don't know their schedules. I just know there's a fairly significant conflict that they will have to navigate. For that to be an inadvertent oversight, when it comes to scheduling provincial consultations, is so disappointing. You would think that whoever is looking at this and scheduling would have done their homework and looked at the broader community to see if there were some of those conflicts. That would only be true if the goal was to actually include more people in the conversation and not to exclude. So that's disappointing.

Another piece that I am aware of in terms of scheduling—and I don't know that I'm proposing this as an amendment, but as a suggestion: On that Thursday, November 26, from noon until 2, there's a justice for injured workers rally at the WSIB office. Perhaps we can schedule the consultations there, as this bill does address

many amendments to the WSIA. Perhaps we'd like to take the opportunity to travel this bill and include those who would be most directly affected by this bill. Do we have any takers?

The Chair (Mr. Shafiq Qaadri): Two issues: One, with reference to the amount of committee time, it's actually not four hours. It will be five hours and 15 minutes because it will start at 9 a.m.

Secondly, I do not even wish to think about the administrative changes required to move this committee off-site, elsewhere.

The Clerk of the Committee (Ms. Tonia Grannum): That's our regular scheduled meeting time: 9 to 10:15 and then 2 to 6.

Ms. Jennifer K. French: Thank you for the clarification.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier?

Mr. Randy Hillier: Chair, it is disappointing that that amendment was voted down. It's disappointing to see the Liberal members turning their backs, refusing organized labour and workers to have an opportunity to speak and make presentations on this bill. We know that it has significant impacts on organized labour and on injured workers, and refusing them to have the opportunity or limiting their opportunity to address the members of the Legislative Assembly is disappointing.

The Chair (Mr. Shafiq Qaadri): Are there any further comments before we proceed to consider the amended and entire motion presented by Mr. Potts? Any further comments? If not, we will now proceed to consider the entire motion, all nine clauses—and number (6), as you see, is amended.

Ms. Jennifer K. French: Recorded vote.

The Chair (Mr. Shafiq Qaadri): Recorded vote.

Aves

Balkissoon, Martins, Naidoo-Harris, Potts.

Nays

French.

The Chair (Mr. Shafiq Qaadri): This full motion carries. We will enforce it as has been written.

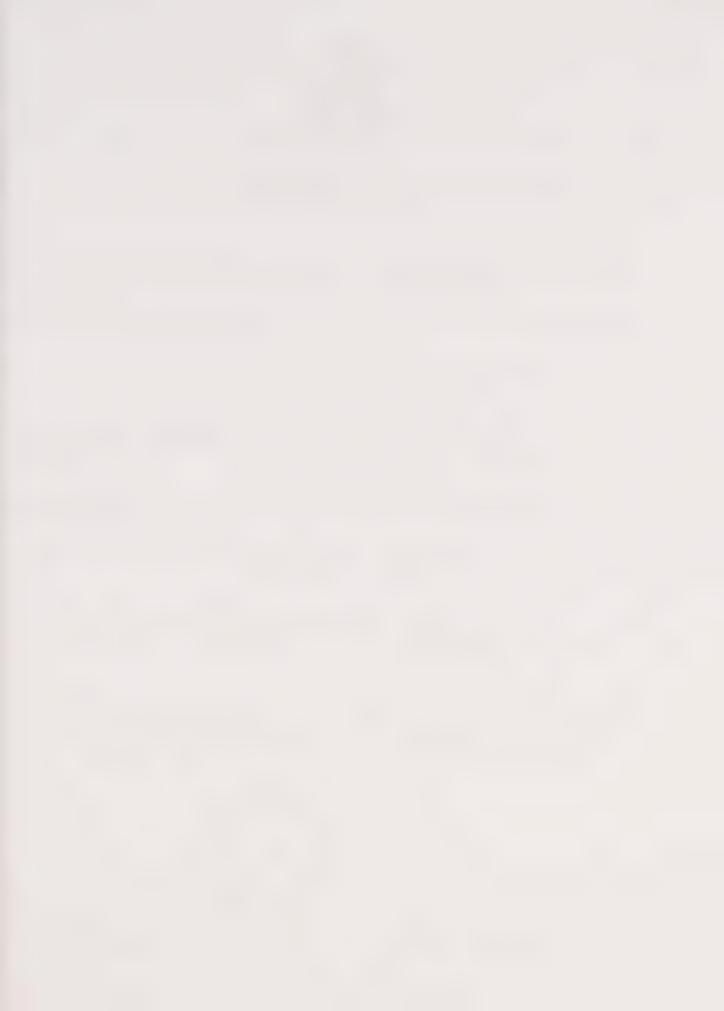
Are there any further comments or any further business of the committee?

Mr. Randy Hillier: I move adjournment.

The Chair (Mr. Shafiq Qaadri): We move adjournment. Carried. We will see you next week.

The committee adjourned at 1633.





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First Session, 41st Parliament

Official Report of Debates (Hansard)

Thursday 26 November 2015

Standing Committee on Justice Policy

Employment and Labour Statute Law Amendment Act, 2015



Assemblée législative de l'Ontario

Première session, 41^e législature

Journal des débats (Hansard)

Jeudi 26 novembre 2015

Comité permanent de la justice

Loi de 2015 modifiant des lois en ce qui concerne l'emploi et les relations de travail

Chair: Shafiq Qaadri Clerk: Tonia Grannum Président : Shafiq Qaadri Greffière : Tonia Grannum

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 26 November 2015

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 26 novembre 2015

The committee met at 0903 in committee room 1.

EMPLOYMENT AND LABOUR STATUTE LAW AMENDMENT ACT, 2015 LOI DE 2015 MODIFIANT DES LOIS EN CE QUI CONCERNE L'EMPLOI ET LES RELATIONS DE TRAVAIL

Consideration of the following bill:

Bill 109, An Act to amend various statutes with respect to employment and labour / Projet de loi 109, Loi modifiant diverses lois en ce qui concerne l'emploi et les relations de travail.

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. As you know, we are here to consider Bill 109, An Act to amend various statutes with respect to employment and labour. We have a number of presenters scheduled throughout the day, and the protocol will be 10 minutes' opening presentation time, to be followed in rotation by each party, three minutes.

ONTARIO PROFESSIONAL FIRE FIGHTERS ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I'd welcome our first presenters to please come forward. Representing the Ontario Professional Fire Fighters Association: Mr. Santoro, Mr. LeBlanc and Mr. Howard Goldblatt. Please be seated, colleagues and gentlemen. Once you are seated, time will begin, and the time, as you know, will be enforced with military precision. Please begin. Do introduce yourselves. Time begins now.

Mr. Carmen Santoro: Thank you. Good morning, ladies and gentlemen of the committee. My name is Carmen Santoro. I am the president of the Ontario Professional Fire Fighters Association. With me today is Fred LeBlanc, 13th district vice-president of the International Association of Fire Fighters, and Howard Goldblatt, counsel to the OPFFA. I am pleased to join you this morning to comment on Bill 109.

The Ontario Professional Fire Fighters Association represents approximately 11,000 professional firefighters in 80 locals throughout the province. Affiliated with the International Association of Fire Fighters, the OPFFA has evolved into an organization whose primary purpose is to provide career firefighters with the highest level of

service and expertise to assist them in all aspects of their professional lives.

The OPFFA is pleased to appear before this standing committee and to express its support for the passage of Bill 109 and, in particular, schedule 1, which addresses issues of fundamental importance for all participants in the fire services sector. As the first comprehensive review of the labour relations provisions of the Fire Protection and Prevention Act, 1997 since its passage, Bill 109 is fair and balanced and places professional firefighters and their associations on a level playing field with other organized workers in the province.

Bill 109 introduces, for the first time, comprehensive protections for professional firefighter associations, their officers and members, as well as for employers and employer organizations and their officers and members, from a variety of unfair labour practices such as interfering with bargaining rights, intimidating and coercing members because of their support for their organizations etc. These unfair labour practice provisions are identical to those which have been in place for decades in the Labour Relations Act, 1995 and its predecessors. Rather than being a radical departure, Bill 109 provides traditional and long-standing rights and protections to all participants in the fire sector. The OPFFA welcomes these changes.

Presently, only allegations that a firefighter association has violated its duty of fair representation towards its members are heard by the Ontario Labour Relations Board. Other violations of the current provisions of the FPPA, such as a claim that there has been a breach of the duty to bargain in good faith, must be heard in the courts, which is both expensive and time-consuming. Moreover, it has been long recognized that the courts are not particularly attuned to, or expert in, labour relations issues.

Under Bill 109, all of the enforcement provisions of the LRA will be made available to both employers and firefighter associations to support the proposed additional unfair labour practices. The OLRB and its officials will be able to address allegations with expertise and efficiency and provide for a much more expeditious and comprehensive means to resolve these disputes.

Most collective agreements covering professional firefighters in the province provide that firefighters must join and maintain membership in the firefighter associations as a condition of their continued employment. Firefighter associations will now be given statutory au-

thority to negotiate these union security provisions into their collective agreement under Bill 109, the same entitlement as other organized workers under the LRA.

Bill 109 also mandates the Rand formula, requiring that all employees pay union dues, be included in a collective agreement at the request of the firefighter association. This provision, which has a long history for both public and private sector workers under the LRA, demonstrates a further commitment by the government of Ontario to treat firefighters in the same way as other organized workers in both the public and private sectors.

The committee may be aware of the dispute over socalled two-hatters, which has attracted some scrutiny by the media and others over the last few years. Two-hatters are professional firefighters who work as volunteers in other communities, contrary to the constitution of the International Association of Fire Fighters, with which all local firefighter associations are affiliated. As a result, these firefighters have been sanctioned by the IAFF, and those who refuse to leave their volunteer positions face the possibility of being removed from their entitlement to union membership.

Bill 109 does not specifically address the two-hatter issue nor should it, since this is fundamentally an internal union issue. Nonetheless, the proposed amendments under Bill 109 will prohibit firefighter associations from seeking to have two-hatters who have lost their union membership discharged from their employment where, amongst other things, they have engaged in reasonable dissent within the association. In other words, under Bill 109, each such case will be examined on its own particular facts and will require careful consideration by adjudicators of the reasons underlying the attempt by the association to seek the discharge of these former members. Most importantly, the committee must appreciate that these same provisions have governed both public and private sector workers under the LRA for decades. In adding these provisions into Bill 109, the province has rightly chosen to treat firefighter associations the same as other organized employees and their unions under the LRA.

One of the ongoing frustrations faced by firefighter associations and their members is the delay in having grievances under their collective agreements heard and determined by impartial arbitrators. Bill 109, once passed, will provide firefighters with the same expedited arbitration process found in the LRA and under which discharge grievances can be heard in as few as 35 days from the date of the grievance and other grievances within 51 days of the grievance filing. The OPFFA is highly supportive of these amendments.

As we have noted, there are over 80 municipalities in this province, of widely varying sizes, whose firefighters are unionized and represented by specialized, knowledgeable firefighter associations. While these associations have made steady progress towards improving the working conditions of those serving the public in this highly hazardous occupation, the labour relations

provisions in the FPPA have lagged behind the rights, privileges and protections afforded other unions and their members. Bill 109, when passed, will redress this inequity in a manner that also provides rights, privileges and protections to employers and employer organizations.

Bill 109 also provides for amendments to the Workplace Safety and Insurance Act, 1997 in schedule 3. We would point to one such amendment in particular that addresses what the OPFFA has long considered to be an inequity in the way in which survivor benefits have been calculated.

The proposed amendment will permit the Workplace Safety and Insurance Board and its appeals tribunal to calculate survivor benefits on the basis of workers' average earnings of the deceased worker's occupation at the time of worker injury or diagnosis rather than in accordance with the statutory minima, as might otherwise be the case. The OPFFA strongly supports these amendments.

Thank you for the opportunity to share the OPFFA's position on Bill 109. I would be pleased to take any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Santoro. We'll begin our first rotation with the PC Party. Mr. Arnott.

Mr. Ted Arnott: Thank you, gentlemen, for coming to the committee today to speak about Bill 109. Let me first say that our caucus appreciates and values the work done by all of our firefighters in the province of Ontario, full-time and professional, so we appreciate your participation here.

Do you feel that your organization was adequately consulted in the drafting of Bill 109?

Mr. Carmen Santoro: Absolutely.

Mr. Ted Arnott: And you support it in full?

Mr. Carmen Santoro: Yes, we do.

Mr. Ted Arnott: Okay. You mentioned in the unfair labour practices and enforcement section of your presentation, "Other violations of the current provisions of the FPPA, such as a claim that there has been a breach of the duty to bargain in good faith, must be heard in the courts, which is ... expensive and time-consuming." Have there been numerous examples whereby those kinds of disputes have had to go to court to be resolved?

Mr. Howard Goldblatt: Mr. Arnott, there haven't been numerous examples, but one of the reasons—

The Chair (Mr. Shafiq Qaadri): Sorry, if you could just identify yourself first.

Mr. Howard Goldblatt: Sorry. I apologize, Chair. Howard Goldblatt, legal counsel for the OPFFA.

There have not been numerous examples. The reason for that is that in addressing the issue, we've had to advise with respect to both the time and the expense involved in going to court as opposed to going before the Ontario Labour Relations Board, where I can advise there are numerous examples of bad-faith bargaining charges being filed.

So it's been a deterrent in its current form. Just by way of example, the duty of fair representation also used to go

to the courts, and the Legislature felt it was appropriate to put that before the Labour Relations Board years ago, just bringing the rest of the unfair labour practices up to speed with that.

Mr. Ted Arnott: I would just like to conclude with a brief word on the two-hatter issue. As some members of committee might know, I initiated a private member's bill in 2002 supporting the right of volunteer firefighters to serve also as full-time firefighters in communities nearby where they lived.

Obviously, this bill does have an impact on that issue, and I want to express my appreciation to your organization for your willingness to move towards a position, I think, that is closer to the one that I expressed in 2002. I think it's in the interests of public safety that we ensure that there is some measure of legislative protection for two-hatter firefighters, so I want to express my appreciation to the federation for taking that position.

The Chair (Mr. Shafiq Qaadri): To the NDP side: Ms. French.

Ms. Jennifer K. French: Welcome to Queen's Park. Thank you for all that you do. We're pleased to hear your deposition this morning.

Bill 109 addresses a piece of a bill that, actually, we brought in, Bill 98. There is a key difference—and I know that you are of course familiar with both. Bill 109 provides that retroactivity on awards due to occupational injury or illness would have had to have taken place on or before—

The Chair (Mr. Shafiq Qaadri): Ms. French, sorry, could you just aim yourself at that mike a little more? Thanks.

Ms. Jennifer K. French: Are you having a problem with my volume? I've never heard that before—on or after January 1998. I was just wondering if you could comment on that retroactivity piece and that specific date.

Mr. Carmen Santoro: I think the specific date you're referring to is before the act was put in place. It may or may not be relevant with this specific issue, but I'm sure that if the retroactivity was put in place years prior to it, it obviously would have some benefit to our members.

Ms. Jennifer K. French: And certainly the nature of occupational disease and its latency.

What does it mean to your members to have that peace of mind knowing that the plans that they've put in place—that their surviving spouses have access to a fair benefit and wouldn't be targeted based on retirement date?

Mr. Carmen Santoro: It's extremely important. I think the point that you're making is fair and it's extremely important because there are many surviving spouses who have not been treated fairly in the recent few years.

Ms. Jennifer K. French: Okay. Do you have a comment?

Ms. Cindy Forster: Have we got more time?

The Chair (Mr. Shafiq Qaadri): Yes. You've got a minute and a half.

Ms. Cindy Forster: So the rest of the bill under the Labour Relations Act would actually give you access now to expedited grievance arbitration. Can you tell us a little bit about what your experience has been with respect to how long it actually takes you to get through a process without having access to section—I don't know, Howard, is it 49, 51 or whatever? Is it 49 still?

Mr. Howard Goldblatt: Yes, it's the equivalent of section 49. It can take easily a year and a half to two years. When we're dealing with a discharge case, which are the ones that obviously need to be dealt with as expeditiously as possible. It's just an incredible source of frustration. It also affects the outcome at the end of two years because individuals are far more likely to take a bad settlement than wait the full two years because they are unable to support their families in that period. The result has been that expedited arbitration is universal across the province, except for firefighters, and it has worked extremely well.

Ms. Cindy Forster: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster and Ms. French. To the government side: Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I want to thank all of you for coming in today. The Ontario professional fire-fighters, I know, is a very important part of the service delivery in our province. We very much appreciate all of you coming in today and it's really great to see you here. I also want to thank you for the work that you do every day to ensure that we all live in a safe environment. I want you to know that our government very much appreciates the hard work that you do in putting your lives on the line every day for all of us. Thank you.

I found your presentation, Mr. Santoro, very, very revealing and very in-depth, so thank you for going through the various sections and talking about how each of them impacts on firefighters out there and on the ground. I'm more interested in finding out, in a more general sense, just what some of these provisions in Bill 109 will mean to a firefighter on the ground. We've talked about the various sections and how they relate to things, but how will some of this really impact and change the lives of a regular firefighter?

Mr. Carmen Santoro: I think, in a nutshell, it puts us on the same level playing field as other labour groups in all areas of the bill. I think that's been a long time coming, and we applaud this government for bringing us on the same level playing field as other labour groups. It means a lot to our firefighters.

Ms. Indira Naidoo-Harris: You talked about unfairness and you also talked at times about the hazardous conditions that your people work under. Explain to me how this bill will really ensure that any unfairness that may occur will no longer be possible.

Mr. Howard Goldblatt: I don't think it's a question of "no longer be possible." What it is, is it provides a method by which we can have these issues dealt with quickly and decisively by an expert tribunal. When those prospects arise, it significantly is a deterrent to those who

might otherwise take advantage of the lack of the provisions, which have so far been in the act. We see it every day and putting those provision in the act, frankly, as Mr. Santoro said, not only levels the playing field, but I think improves the atmosphere in which negotiations are conducted and general day-to-day labour relations are conducted.

Ms. Indira Naidoo-Harris: You talked about levelling the playing field. Do you feel then ultimately, in the end, that Bill 109 changes the playing field in a way that really enhances and allows firefighters out there to be able to get their jobs done?

Mr. Carmen Santoro: Absolutely. Absolutely. Thank

Ms. Indira Naidoo-Harris: I believe that might be my time. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris, and thanks to you gentlemen—Messieurs Santoro, LeBlanc and Goldblatt—for your deputation on behalf of the Ontario Professional Fire Fighters Association.

0920

SEIU HEALTHCARE

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward, from Service Employees International Union Healthcare Canada: Mr. Klein, Ms. Buckingham, Mr. Carvalho and Mr. Spence.

Please feel free to be seated. Thank you. Please do introduce yourselves. Your time begins now—a 10-minute opening address.

Mr. Emanuel Carvalho: Good morning. My name is Emanuel Carvalho. I am the secretary-treasurer of SEIU Healthcare. I am joined today by Ainsworth Spence, a front-line worker at one of our hospitals, and John Klein, director of organizing. I'd like to start by thanking the committee for giving us the opportunity to appear before you this morning.

SEIU Healthcare advocates on behalf of more than 55,000 front-line health care workers in Ontario who work across the spectrum of care, including hospitals, nursing homes, retirement homes and out in the community. Our members are a diverse population, which includes personal support workers, registered practical nurses, RNs, health care aides and a variety of other front-line health care providers.

We are here today to speak specifically about schedule 2 of Bill 109 and what we consider to be positive amendments to the Public Sector Labour Relations Transitions Act. SEIU supports these amendments as we recognize the growing frequency of PSLRTA votes as a result of the continued transformation within Ontario's health care system. That is why the amendments to PSLRTA under schedule 2 of Bill 109 are not only timely, but we welcome and support this bill and what it means to the experiences of labour changes within their own workplaces.

I would like to acknowledge that there is not a uniform consensus among Ontario's labour unions about these amendments. However, we would like to point out that similar legislation—specifically, setting a minimum threshold of when votes in labour relations are triggered—has been successfully implemented and practised in several other Canadian jurisdictions for up to 20 years. For example, in 1996, the Saskatchewan government under the NDP Premier, Roy Romanow, enacted the Health Labour Relations Reorganization Act. This act dictates that in the case of a representation vote, a trade union will only be included on the ballot if they meet a minimum threshold of representing a percentage of the current health services providers.

By setting a minimum threshold—in the case of Sas-katchewan, the minimum threshold is set at 25%—the government was able to foster a fair opportunity for unions to participate while limiting labour disruptions and inefficiencies, when reasonable. Moreover, the legislation, which was initially introduced by the NDP government of the day, has endured governments of various political stripes. Demonstrating stability, effectiveness and longevity, this legislation has not only respected the rights of workers but has also supported numerous health care transitions within the public sector.

SEIU recognizes the value that Ontario's labour relations transition legislation currently supports by enabling workers to decide which union should represent them. The proposed amendments in schedule 2 are designed to further ensure that the rights of employees across Ontario are protected and that PSLRTA votes are triggered only when reasonable and appropriate.

As you will hear from Ainsworth, our current use of PSLRTA mergers can cause additional unnecessary disruption in the workplace and lead to problems with morale that can remain long after the merger vote has concluded.

I will now pass it over to Ainsworth before concluding my remarks.

Mr. Ainsworth Spence: My name is Ainsworth Spence, and I wanted to start by thanking the members of the committee for the opportunity to share my experience and my opinion with you today.

The impact of the PSLRTA vote at my hospital was quite significant. With over 2,500 unionized workers affected by the vote, the interaction and activities from the various unions involved was not what I expected. What began as a notification that a small unit of workers was going to join my own existing unit quickly turned into something nasty and unexpected. I received a lot of information about the benefits of being a member of the various unions—more than that: I experienced an attempt by the unions to use this moment of uncertainty at my workplace as an organizing drive that involved spreading misinformation between co-workers.

As the daily campaigns proceeded, the emotional tolls on the workers became heightened. Months went on, and what was at first a positive union environment focused on delivering care turned into a workplace of distrust and divided factions amongst colleagues. Morale in the hospital was at a low. In the end, the result was what everyone expected, but the community and camaraderie enjoyed by myself and my co-workers pre-campaign was forever changed, even two years after. I wish this proposed PSLRTA legislation would have been in place two years ago. My example, at a unit representing well above the base number in this legislation—it would have meant stability for my colleagues.

I am a proud health care worker, I am a proud member of the labour movement and I am proud to represent my union. I expect my union to participate in the democratic process, just as I participate in the democratic process. But I do not want my union fighting with other unions as a way of organizing in examples such as mine. When reasonable, I want stability in my workplace. I want my dues to be invested in fighting for a better future. If it were SEIU or any other union, I would expect this from them. I believe that working people expect this too.

Mr. Emanuel Carvalho: Thank you, Ainsworth.

In our view, Bill 109 aims to address experiences like Ainsworth's by fostering a more positive working environment. SEIU recognizes that the transformation in Ontario's health care system is just beginning. It is our position that our energy and our resources should be providing input on public policy to help our members continue to provide high-quality care to their patients during this period.

Not only do these particular PSLRTA merger votes create further instability in the workplace, but the campaigns leading up to the vote can be very costly. In many cases, significant union resources are allocated during these consolidations

during these consolidations.

I'd also like to emphasize that Bill 109 is taking a fair and equitable approach to prevent one union from dominating a majority of the representation. If these PSLRTA amendments are passed, any and all unions currently representing workers in Ontario's health care system will continue to experience wins and losses on ballot votes at one point or another.

Finally, we'd like to address the misconception we've heard from various individuals and assure this committee that the democratic rights of workers will continue to be protected if these proposed amendments to PSLRTA are passed. For example, the Ontario Labour Relations Act already contains provisions that afford employees the opportunity to select a union in favour of another, or terminate a union's representation altogether. These rights already are well established and can be exercised more frequently at the sole discretion of the individual members. I would even venture to say that union members have more opportunities to exercise their rights to vote for or against a union than a general voter has in voting for politicians in this country.

The intention of Bill 109 is to reduce, only when reasonable, the disruption to workers during the time of transition while protecting their rights to be well represented. I acknowledge that not all unions agree with this legislation. Some do; some do not. Our union does support it. We would again like to thank the committee for the opportunity to speak to you this morning, and we look forward to some of your questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Carvalho. We'll begin with the NDP. Ms. Forster?

Ms. Cindy Forster: Thank you, Chair.

Thanks for being here today and for bringing your comments on this piece of legislation. Was SEIU consulted by the government with respect to this schedule in Bill 109?

Mr. Emanuel Carvalho: Yes.

Ms. Cindy Forster: You were. And were there any discussions regarding what would happen in a situation where there were 60% non-union and 40% union? Would there then automatically be no union in that merger of that workplace?

Mr. Emanuel Carvalho: We in fact had many conversations about this piece of legislation. Our main focus was to ensure that our members' voices were heard. As you heard Ainsworth speak, getting away from the technicalities, what we were most concerned with was the relationship that our members had on the work floor after the winners become the losers during these representation votes. We were most concerned with the relationships that were left behind, the turbulence that was left behind in the relationships that I would venture to say, at the Niagara Health System, have probably taken over 10 years to rebuild.

0930

Worrying about technicalities and percentages, I think in this particular situation, we wanted to ensure that our members were protected first and foremost, and that as a union, we were exercising the rights of our members.

Ms. Cindy Forster: Did you have, though, a specific discussion about that particular scenario? Because there have been situations in mergers of hospitals where one hospital was non-union and another hospital was unionized, and the non-union side had more than 40%, so there were votes that took place. I just wondered if that discussion took place.

Mr. Emanuel Carvalho: Brigid?

Ms. Brigid Buckingham: Brigid Buckingham. I'm the head of policy at SEIU as well.

We understand that the legislation currently states 60%, but there could be further government regulations that could be introduced to revise that minimum threshold. Our preference would actually be, probably, to set it at about 75% as a minimum threshold, which states a clear majority at that point.

Mr. Carvalho had referenced the Saskatchewan model, where it was set at a minimum of 25%. Basically, what I believe the government has done is created enough flexibility—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Brigid Buckingham: —but the 75% would basically be the inverse of what Saskatchewan has currently been practising successfully.

Ms. Cindy Forster: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster. We pass it to the government side, to Ms. Martins.

Mrs. Cristina Martins: I just want to start off by saying thank you very much for being here today and for presenting, and thanking SEIU and the 55,000-plus front-line health care employees who work in our hospitals, long-term care facilities and home care agencies throughout Ontario. I represent the riding of Davenport and have many of your union members in my riding, and I know the fantastic work that they do through you. So thank you for that.

We talked a little about the threshold and the number not having been finalized just yet. I know that we're committed to working with our partners to finalize that number, to decide whether it is 60%, 75% or whatever number that is; and that we will be working with everyone to set out that threshold through regulation.

I guess my question is for Mr. Spence, and thank you so much for sharing your experience. Can you go into greater detail about how these amalgamating votes have changed your workplace? What was it like? Is this proposed piece of legislation going to streamline the process? Are you going to see better conditions in your workplace? You talked about the negative morale and the negative workplace environment. How do you see the workplace changing with all of this?

Mr. Ainsworth Spence: Well, I think it was more so the results of what happened because of the PSLRTA. If we had some mechanism in place where a workplace as big as Sunnybrook hospital had to go into a fight with relatively less than 10% of an outside unit—that actually came in and pretty much disrupted the actual relationship that went on at the hospital.

As an outsider, you're trying to come in and you're given different promises and different offers; and obviously, as human beings, we're going to be enticed. Because that happened, a lot of members didn't necessarily get what they wanted and didn't actually benefit from those promises. So at the end, when they say you won, it actually created, literally, a toxic environment in terms of relationships.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mrs. Cristina Martins: So you see this particular part of legislation actually eliminating some of that toxicity and making sure that there is a more positive workplace environment.

Mr. Ainsworth Spence: Most definitely. Most definitely.

Mrs. Cristina Martins: Okay. Well, thank you very much once again.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Martins. To the PC side: Mr. Arnott.

Mr. Ted Arnott: Thank you very much for your presentation this morning. I want to express my appreciation as well for the work that your members do in the health care system in the province of Ontario.

Judging by the recent statements of the Minister of Health, we can anticipate that there will be some mergers in the offing in the next few months, perhaps in the next year. This is an issue that's looming. You're expressing support for this provision in Bill 109 that would end

these merger-driven representation votes, and you've acknowledged that some of the other unions that have an interest in this issue have expressed opposition.

You said it's a very costly process. Can you explain to the committee members how these votes are undertaken, what they cost, how long they take and what those related issues are?

Mr. Emanuel Carvalho: Thank you for the question. I think that the experience that we've had in the past has allowed the Ontario Labour Relations Board to kind of set a pattern for how votes are conducted. There's almost a standard template now. There's a long process. I just think it's important that people understand that we don't understand what the employer is going to do on the other side, so we don't know what the spectrum of a vote looks like on the front end.

What we do know is that once it starts happening. there are a lot of legalities that happen on the front end. There's a lot of time consumed with lawyers arguing positions, bargaining rights and all kinds of different things to ensure that our bargaining units are protected. Once that process is somewhat exhausted—again, that can take anywhere from months to a year to come to a conclusion. Once that is concluded, then there's, I believe, a standard template of a two- to three-week campaign phase where both sides—or three sides or four sides, depending on the size of the amalgamation—come and have open access to all sites, and they have their own campaigns. That, again, involves more staff resources, more member resources, more time dedicated specifically to union representation votes, as opposed to bargaining and protecting members' rights.

So to that question, what you're asking, that process is not something that I could say would take a month, a year or X amount of dollars. In fact, that's a flowing number that can be quite expensive.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Ted Arnott: Well, thank you very much for that answer. Is it not true, though, that after a democratic vote takes place there is greater acceptance of the outcome in the workplace?

Mr. Emanuel Carvalho: I think my friend Ainsworth Spence spoke to it. I can speak to my own experience as a union leader and an organizer on the ground, and I think I made the comment earlier to my friend that when there's—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott, and thanks to you, Mr. Carvalho, Mr. Klein, Ms. Spence—

The Clerk of the Committee (Ms. Tonia Grannum): Mr. Spence.

The Chair (Mr. Shafiq Qaadri): —Mr. Spence—for your deputation on behalf of the Service Employees International Union.

CHRISTIAN LABOUR ASSOCIATION OF CANADA

The Chair (Mr. Shafiq Qaadri): I would invite our next presenter to please come forward: Mr. Ian De

Waard, representing the Christian Labour Association of Canada.

Welcome, Mr. De Waard. You've seen the protocol: 10 minutes of opening comments to be followed by questions in rotation. I invite you to please begin now.

Mr. Ian De Waard: Thank you, Mr. Chair and members of the committee, for the opportunity to provide CLAC's perspective on Bill 109. My name is Ian De Waard. I'm a regional director for CLAC.

CLAC is an independent, multi-sector, all-Canadian union in Canada and is one of the fastest-growing unions in the country. Founded in 1952, CLAC now represents over 60,000 members, 15,000 of which reside in Ontario. Provincially, our members serve in the health care sector, in construction and as volunteer firefighters.

We're here today to discuss all three aspects of this broad piece of legislation and to provide the perspective of our members on the changes that are being debated in the Legislature.

First, with respect to schedule 1, the Fire Protection and Prevention Act: CLAC's 1,200 volunteer firefighter members serve mostly in cities that were amalgamated between 1998 and 2000. In these large, more complex municipal structures, volunteers can find it difficult to be heard as a stakeholder group. So while the concept of a union for volunteers can seem oxymoronic, in fact collective bargaining can enable them to better coordinate their voice, and it creates a forum in which to effectively engage municipal decision-makers.

CLAC's volunteer firefighters are not covered by part IX of the Fire Protection and Prevention Act, but we support the changes that this bill brings. These changes to the FPPA are adopted from the Labour Relations Act and can be understood as simply extending protection and tools that have been already well established in industrial relations in Ontario.

0940

My comments about this part of Bill 109 will focus on section 52.2, which is found under the title "Permissive provisions." Among other things, this section formalizes the ability to establish a closed shop union. I say "formalize" because closed shop unionism is not new to the fire service; it's just that the FPPA does not currently reference a framework for such union structures. This section, just like is done in the LRA—the Labour Relations Act—will ensure that a union cannot use its authority to unreasonably deprive someone of union membership in order to cause that person to be discharged from or denied employment as a firefighter.

It is CLAC's view that this addition will offer long-awaited protection for two-hatter firefighters in the province. A two-hatter is someone who is employed as a full-time firefighter in one municipality and who also serves in their spare time as a volunteer firefighter in another, usually their hometown. Over the past 15 years, the union that represents full-time firefighters has threatened to expel from membership anyone who is caught volunteering, which in turn means the loss of their full-time firefighter employment.

CLAC has made repeated calls for a legislative solution over the years, and efforts to protect two-hatters have been before Queen's Park before. We're very pleased to see that this bill seems to finally offer two-hatters protection, and that the government is prepared to act boldly on what has been a contentious issue.

However, we do wish to also raise a word of caution. As I've already mentioned, the language in this section is exactly as it's found in the Labour Relations Act, but we can find no jurisprudence that would help us anticipate how this text would be used in a case of a two-hatter. There is likely no situation in a workplace covered by the Labour Relations Act that is analogous to the issue that two-hatters have faced.

With that in mind and in order to ensure that language from the Labour Relations Act is sufficient for use in this FPPA context, we suggest one addition. Section 52.2(2) is found under the heading: "Where non-member fire-fighter cannot be required to be discharged." At that section, we ask you to consider adding to the scenarios listed there:

"(h) serves as a volunteer firefighter for a fire department not operated by the employer."

That, if used as the basis for expelling someone from membership, could not be used as the basis for causing that person to be terminated, if you were to adopt that language or something like it.

In Ontario today, there are 19,000 volunteer fighters, serving in 423—or 93%—of the province's fire departments. The greatest challenge facing these departments, in our experience, is attraction and retention. Two-hatters have, in the past, been able to offer their expertise and the transfer of knowledge that experience and training have provided them. That knowledge and experience can be of immense value, so we urge that this schedule of the bill be made into law and, if practical, we suggest that you strengthen its text so that the intention to protect two-hatters will, in future, be irrefutable before any court or tribunal.

Moving on to the Public Service Labour Relations Transition Act: The proposed changes to PSLRTA have brought our leadership team at CLAC a great deal of concern. Our union has long been a proponent of ensuring that workers can democratically and collectively choose the union that represents them. The collective power of the workers to build better a workplace community is enhanced, not diminished, when workers can freely elect to join, retain or displace the union that represents them.

CLAC does not support the change in this section of the bill. It permits that a unilateral decision to amalgamate workplaces in the broader public sector will cause an automatic change in bargaining agent. When one of the groups is not large enough, this change will take place with no regard for the will of the affected workers. In our opinion, this amendment undermines a basic freedom of association, an essential right and Canadian value.

During the course of the debate on this bill, we have heard from members of the governing party that this change is about eliminating a redundant step in the process of rationalizing or amalgamating public services. We do not accept that a vote to choose a bargaining agent is redundant and we don't believe that this essential freedom of association should be taken away from workers.

As with general elections, the decision to join a particular union is made on a specific day and the prize goes to a particular winner. Such a decision represents the will of that workforce in that place and time, and this collective decision should be binding until or unless the workforce—the members—chooses another union or chooses to become non-union, if that's their will. The critic from the third party—Ms. Forster, I believe—in the course of the debate raised an example of a bargaining unit with 100 members that was successful in an amalgamation vote against a union with 10 times that number. This is a fantastic example of workplace democracy and union accountability.

The act of democratically choosing a bargaining agent is an important exercise in building a strong, healthy union movement. CLAC experienced this itself last year when Hamilton Health Sciences absorbed the West Lincoln Memorial Hospital in Grimsby, Ontario. Workers at this small community hospital had been represented by CLAC for more than 20 years. Those members did not want a change in representation or to forgo the collective agreement that they had worked hard to develop and to craft for their particular workplace. In the end, our members were absorbed into that other union, but only after a legitimate campaign for choice, and after having had the opportunity to fairly cast their vote. It was not a perfect outcome and CLAC has made some suggestions to address this kind of scenario in the future, but these suggestions are beyond the scope of this bill. In that case, the electoral process was democratic and the members have accepted the result because they were entitled to the process.

We ask that the members of this committee, and the members of the governing party in particular, take the opportunity afforded them in this process to pass an amendment to strike schedule 2 from the bill.

Lastly and briefly, some comments with respect to the Workplace Safety and Insurance Act in schedule 3: There is some ground here where there's more consensus, and CLAC is pleased to see these positive steps to improve protections and benefits for workers. We support these measures because they provide greater protection to workers and stiffer penalties for those who would seek to penalize or threaten for reporting a workplace injury.

Further, we applaud the changes to the assessment of net average earnings of a deceased worker. When a tragedy at work takes a life, it's important that the policies and procedures in place for determining compensation for surviving loved ones and dependants is fair. The changes proposed in this section of the bill provide greater certainty that this will be the case and will address unfortunate cases that have occurred since 1998.

In conclusion, I want to thank the members of the committee for the opportunity to speak to this bill and would welcome any questions you may have.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. De Waard. We'll begin with the government side. To Mr. Thibeault.

Mr. Glenn Thibeault: Thank you, Mr. De Waard, for being here today and for your presentation. It was informative and I was very interested in hearing some of what I guess you would call and I would call friendly amendments when it comes to the two-hatters piece.

But I'd like to move on to the PSLRTA piece that you were talking about. I know we had our friends from SEIU Healthcare presenting before you, and I believe it was Mr. Klein who was talking about how the democratic rights of workers will be protected with this new schedule. He also used the words "only when reasonable and appropriate" quite often.

We also have a letter here from the president of Unifor—and I know we only have three minutes, so I'm not going to read the whole thing. In this letter, Mr. Dias says, "Unifor accepts that this measure is a reasonable and practical approach to curtailing some of the regrettable mischief and turmoil caused by these PSLRTA campaigns—subject, of course, to what that prescribed percentage would be." He continues to go on—

Ms. Cindy Forster: Point of order.

The Chair (Mr. Shafiq Qaadri): Not really acceptable at this time, but go ahead, Ms. Forster.

Ms. Cindy Forster: We don't have a copy of the letter from Unifor that the member is referring to.

The Chair (Mr. Shafiq Qaadri): While unfortunate, I'm not sure that has any bearing on the current—was this distributed at this committee?

Mr. Glenn Thibeault: I just have a letter from—

The Chair (Mr. Shafiq Qaadri): I think Mr. Thibeault, as a citizen of the country, is allowed to be in possession of any letter he wants. If this was not distributed at the committee, it's irrelevant for your comment.

Please continue.

Mr. Glenn Thibeault: Thank you, Chair.

It continues on: "In addressing Bill 109, our unions have a clear choice—division amongst unions with some embracing Bill 109 while others launch partisan attacks to preserve the right of a union under any circumstance to compel a vote. Or, as in other jurisdictions, we as unions can in unity adopt a fair and reasonable limit in these future PSLRTA campaigns, whether through a formal consensus amongst our unions or through input into Bill 109."

So what would you disagree with in terms of what SEIU and Unifor is saying in relation to this?

Mr. Ian De Waard: Democracy is always messy, but when you deprive the workers of the chance to cast a vote as to who or which bargaining agent has the authority to represent them, you undermine a fundamental freedom that should not be lightly dispelled with. 0950

I would just point out that in a hospital setting, as an example, management deals with a multiplicity of unions on any given day. So the notion that having multiple unions in most complex work environments is un-

manageable, I think, is untrue, as the current state would bear out. In the case of the West Lincoln Memorial Hospital, they had a collective agreement that they'd worked out over a generation that was unique, in particular, to that environment that's been lost to them.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Ian DeWaard: We would ask that this not be the solution for making PSLRTA work more effectively. We would ask that you remove the schedule.

Mr. Glenn Thibeault: Thank you.

The Chair (Mr. Shafiq Qaadri): Just for clarification: If a communication is received, obviously, to the committee Clerk, to the committee, that is by protocol to be distributed to each member of the committee and to each caucus. If a private communication has been made, that is under different rules. Having said that, Mr. Thibeault, it appealed to you, and I think I've seen members of the government already distribute it, so hopefully that situation is now remedied.

We now move to the PC side. Mr. Arnott.

Mr. Ted Arnott: Thank you very much for your presentation this morning, and thank you to your members for the good work that they do in the province of Ontario. I want to express my appreciation, as well, for the support that your organization gave to my Bill 30 back in 2002, when we had public hearings on my legislation to protect two-hatter firefighters.

Yes, I've interpreted Bill 109 in a similar way that you have, that this is some measure of legislative protection for two-hatter firefighters. Again, you explained what those are. Those are typically full-time, professional firefighters who work at a city department but may volunteer in their hometown on their days off. I have stood up for their right to volunteer in their home communities, enabling those local communities to have a higher level of community safety as a result of their training and their expertise. I continue to maintain that's very important in terms of public safety for rural Ontario. I'm glad that you agree.

But you're also suggesting that there needs to be more clarification in terms of an amendment, and I would ask the government members to take that back to their respective staff to consider. I think if, indeed, the government is making a step to protect two-hatter firefighters, we need to make sure that those steps are going to be effective and achieve their desired result. So thank you for that suggestion.

You indicated that there is no jurisprudence that would anticipate how the text will be used in the case of a two-hatter. Can you explain that a little bit more; what review you did and what you found?

Mr. Ian DeWaard: Sure. I asked our inside legal counsel to do a bit of research on where the correlating piece of the Labour Relations Act, the exact language, has been used. The examples that were there did not mimic the kind of scenario that a two-hatter faces. So a two-hatter—his own union is expelling him because of the things that he's doing in his spare time, in his off-time. I could find no example of a bargaining agent

having caused a worker to lose his job because of things that were done outside of the workplace.

Mr. Ted Arnott: And of course, the other reality is, I think virtually every province in Canada has some measure of legislative protection for two-hatters. Is that not correct, as far as you know?

Mr. Ian DeWaard: Yes; most. Please don't ask me to list them.

Mr. Ted Arnott: Yes, I think that in 2002, that was the case, certainly, in the review that I had received, with the exception, perhaps, of Newfoundland. But all across Canada, there was legislated protection. So again, here we sit 13 years later and it's about time that the legislated protection was extended to the two-hatter firefighters. Thank you again for expressing support.

The Chair (Mr. Shafiq Qaadri): To the NDP side:

Ms. Jennifer K. French: Thank you very much for joining us this morning. I have a number of quick questions for you.

First, were you formally consulted by the government during this process, specific to schedule 2?

Mr. Ian DeWaard: We were not consulted on schedule 2, no.

Ms. Jennifer K. French: You were not consulted on schedule 2.

Mr. Ian DeWaard: We had opportunity to consult and give insight into some pieces of the bill.

Ms. Jennifer K. French: Okay. Thank you. I appreciate your submission, but many of your comments, specifically that this amendment undermines a basic freedom of association or an essential right and Canadian value.

One of the things that you did say is that you've seen there not be a perfect outcome. Have you ever seen a perfect outcome with the democratic process?

Mr. Ian DeWaard: No.

Ms. Jennifer K. French: No, no. I'm reminded of a recent federal election, and I recognize that in the wake of that, there may have been some transition and morale issues, but ultimately, as you have said—

The Chair (Mr. Shafiq Qaadri): It seemed perfect to us, Ms. French.

Ms. Jennifer K. French: —accepted the vote, because they were entitled to it. Some of us are still working on the acceptance piece. But I will go on, as it is my time.

I did want to ask, though: Do you see that there's an opportunity, potentially, if there is always, as you've put it, a unilateral decision to amalgamate workplaces—that that would trigger an automatic change in the bargaining agent? Could you imagine a scenario where you see a merger coordinated so that there is an outcome that is already predetermined? Could you imagine that scenario? If you always know who the winner will be, to coordinate an opportunity to—

Mr. Ian De Waard: I'll try. I'm not sure I understand the question exactly, but there's a great model for how to deal with mergers, acquisitions and sales in the private sector for labour relations, and that's a good model. It works. There are certain criteria that need to be met before there is an amalgamation of bargaining units. So what happens on the corporate side will inform, but doesn't necessarily predict, what's going to happen on the labour relations side.

That's a better model, so we've made submissions in respect of a three-part test that would be mimicked on that and what we think would be better suited for the sector, but as I understand it, it's not part of the scope of this bill.

Ms. Jennifer K. French: Okay. I guess my question was, I could imagine there being the potential that if there was a merger that could be coordinated to have a certain outcome happen—if there was going to be a union that you knew would win and a union that you knew wouldn't—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Jennifer K. French: —that might be an interesting merger to coordinate. Is that—

Mr. Ian De Waard: In a case like that, where bargaining agents are displaced or changed, a collective agreement is displaced, changed or forgone, the workers should have ultimate say as to which bargaining agent and collective agreement is retained.

Ms. Jennifer K. French: Not the government?

Mr. Ian De Waard: Yes.

Ms. Jennifer K. French: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French.

Just before dismissing you, Mr. De Waard, I just want to comment once again on Ms. Forster's request. You've received, I hope, the Unifor letter. As far as we can determine, it's not actually addressed to the committee, but you are within your rights to ask for a copy. I'm glad that the obliging parties have communicated this to you.

Thank you, Mr. De Waard, and thanks to committee members. We're in recess till 2 p.m. this afternoon.

The committee recessed from 0957 to 1405.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I call the Standing Committee on Justice Policy back to order. We are here, as you know, to consider Bill 109, An Act to amend various statutes with respect to employment and labour.

We'll have our first presenter please come forward: Mr. Warren "Smokey" Thomas, president of OPSEU. As you've seen, the protocol is 10 minutes in which to make your initial presentation, to be followed by questions in rotation. Welcome, colleagues. Your time officially begins now.

Mr. Smokey Thomas: Good afternoon, and thank you for the opportunity to speak today on Bill 109, the Employment and Labour Statute Law Amendment Act. My name is Smokey Thomas and I am president of

OPSEU. With me today is Ed Ogibowski. He's our supervisor of organizing for OPSEU.

OPSEU represents more than 130,000 members in the Ontario public service and in the broader public service. You will be familiar with the work our members perform on behalf of the people of Ontario. Hospital lab services, long-term-care facilities, developmental service agencies, colleges, the LCBO, children's aid societies, corrections facilities and emergency response services are just a handful of the workplaces where you will find OPSEU members doing their jobs every day. I'm proud of the work they do and I'm proud to represent them.

I'm with you here today to talk about the proposed changes to the Public Sector Labour Relations Transition Act, 1997 as they are contained in Bill 109. Our comments today are limited to the changes proposed in schedule 2 of the act.

We're not happy with what the government has in mind, and I'll get to that in a moment. Before that, what I wanted to talk about is what is called "workplace democracy." The term "workplace democracy" has various definitions. In some cases, it's the term used to describe how managers and employees come to an understanding and how decision-making is conducted in the workplace. The idea is to replace a top-down management style with a more collaborative and consensus-driven work environment through measures to create a stronger and more productive business or enterprise.

When applied to organized labour itself, however, workplace democracy is not the same. In my world, workplace democracy takes on a different meaning. Workplace democracy means empowering workers within their union. It means giving workers the right to elect who they want to represent them within their union and giving them a strong voice in their relationship with management or the government of the day. It means electing stewards who will bring problems to the attention of management with the aim of remedial action. It means giving workers the right to elect individuals who will represent them and direct their local position on issues to the highest levels inside the union, such as what we find at OPSEU's annual convention.

In the context of Bill 109, it means giving workers the right to elect whichever union they might prefer to represent them through a merger vote. We're all familiar with the term "merger vote"—I hope we are—and it's pretty straightforward. Merger votes occur when two or more unions represent employees who work for a single employer. The employer or either of the unions can make an application to the Ontario Labour Relations Board to have the employees decide for themselves which of the competing unions should represent them. That's the key: giving employees themselves the right to choose which union might best represent their interests.

As I speak, there are merger campaigns going on by competing unions across Ontario. These campaigns are attracting little fanfare because they are routine exercises conducted by organized labour to settle representation issues. Some of these ongoing campaigns include a union

merger at Ross Memorial and Peterborough hospitals, a union merger at St. Elizabeth crisis and Canadian Mental Health Association in Peel region, a union merger at St. Joseph's Care Group in Thunder Bay, and a union merger at the Providence Care hospital in Kingston. In fact, Providence is my place of employment and I'll be voting in a merger vote there sometime next spring. There are several others happening across the province. Nobody outside organized labour pays much attention to these merger votes because they're a well-established practice in a workplace democracy.

I would like to think that all of us in this room would agree that workers, no differently than voters at large in a general political election, should be entitled to decide for themselves who they want to represent them. But regrettably, that is what Bill 109 wants to take away from workers: the right to elect the union of their own choice. Bill 109 would do so by setting an arbitrary benchmark of 60% to determine whether or not a merger vote should be conducted. In other words, if one of the competing unions already represents 60% of the overall unionized workforce, then no merger vote would be held. That's wrong and it's undemocratic. It would be like saying, "Such-and-such political party got the support of 60% of the vote in the last election, so we'll take a pass on having an election this year." Obviously, that would be wrong and undemocratic and nobody in this room would stand in favour of it, let alone the public at large.

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In effect, that is what Bill 109 represents when it comes to workplace democracy in a unionized shop. Workers will be denied due process in electing their union representation if one union happens to represent more than 60% of the combined unionized employees.

Some unions, like CUPE Ontario and the Ontario Nurses' Association, share our serious concerns about Bill 109. Together, our three unions represent more than 150,000 employees inside Ontario hospitals and we have the greatest experience in organizing merger votes. And yet we find the government lining up support from other unions with relatively little experience in merger votes. In my view, they're on the wrong side of history on this one.

I've been told by some of those union leaders that Bill 109 will curtail "mischief and turmoil"—that's a quote from a leader—"caused by merger votes." They say that if an incumbent union enjoys representation from 75% of the combined workforce, then it "obviously commands the overwhelming advantage." They go on to argue that the other minority union is put in a "desperate and untenable position that can lead to bitter and lingering division and resentment among affected workers."

In my experience, these sweeping generalizations don't match what goes on on the shop floor. If there is a risk of "mischief and turmoil," it will occur when workers discover that their right to elect their union of choice is suddenly snatched away by Bill 109.

By lining up behind the government on this bill, these union leaders are exactly undermining workplace

democracy and expressing their opposition to workers to think and act for themselves in their own self-interest. I say this because the bill says nothing—nor should it—about which union is best equipped to negotiate collective agreements and then enforce them. That is best left to the workers to determine for themselves. It shouldn't be decided by legislative fiat.

In my long association with organized labour, I've seen many examples where one union held a strong majority of members going into a merger vote, only to end up on the losing side. These labour leaders smugly thought they had victory in the bag, only to discover their own members had delivered a referendum on their own shortcomings when it came to negotiating strong and enforceable collective agreements. Why so? Because voting workers concluded that the so-called smaller union enjoyed a track record of delivering stronger contracts with the best enforcement results, all the while guided by superior staff resources.

Bill 109 is silent on other aspects of merger votes. What happens when, say, 60% of the workforce in a hospital is made up of non-union members? Does this mean there is no vote at all? Do the 40% unionized lose their union? That runs contrary to the Constitution of Canada.

Let me conclude with this: Bill 109 represents a pivotal struggle over the place that democracy occupies in the workplace. The safeguards we currently enjoy when it comes to merger votes must not be watered down. Workers must maintain their right to make their own choices through a free and fair election process. That is the flaw at the heart of Bill 109: It disenfranchises working people in their own workplace. So we hope you will take that section out in its entirety.

Thank you, and we'd be happy to take any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Thomas. We'll begin with the PC side, three minutes. Ms. Scott.

Ms. Laurie Scott: Thank you for coming here and representing OPSEU, and thank you for all the good work that your members do. I used to be a member of the Ontario Nurses' Association myself.

You've spoken a lot about the 60% threshold. Can you explain the non-union part of the 60% and why you think partisan politics may be at play? Can you elaborate on that?

Mr. Smokey Thomas: It's silent in the act, but the interpretation my lawyer gives me is that if it was 60% non-union and 40% union, then the union just loses and the whole place becomes non-union. That leaves it open to all kinds of creative thinking, if you will, on the part of management and mergers. So yes, that would take away a person's union in its entirety, and that's contrary to the law of the land.

Ms. Laurie Scott: That's excellent. I know that my colleague Mr. Arnott has a question.

The Chair (Mr. Shafiq Qaadri): Mr. Arnott.

Mr. Ted Arnott: Yes, just to follow up: Thank you for your presentation. I thought it was very interesting.

You make some strong arguments in favour of maintaining these merger-driven representation votes that we've had in the past, I think, but it's no secret that within the trade union movement there is some dispute about this issue.

We heard a presentation this morning from SEIU Healthcare. I think they would anticipate that there's going to be a substantial number of mergers in the health care sector going forward, based on some of the recent comments by the Minister of Health. They say that the merger votes are very costly to them because there's a lot of litigation leading up to it. Could you explain what it costs your organization, your union, when you have to go into one of these situations—

Mr. Smokey Thomas: Well, they must be broke. The cost is minimal. What happens is, there's a meeting beforehand with a labour relations officer—who gets paid, anyway, by the government. It takes about a day.

Mr. Ed Ogibowski: Yes.

Mr. Smokey Thomas: There have been so many of these done that there is now just a template. You get a prescribed time that you get access to the hospital; you can hold information meetings, and you can have tables with information.

The cost, even to my union, is negligible, and to the employer, it's nothing. To the government, it's the cost of maybe a day—or if there are disputes, maybe two or three days—of a labour relations officer's time, and that's what they do for a living.

Mr. Ted Arnott: The template has to be agreed upon by both parties, I assume, so that would lead to some disagreement—

Mr. Smokey Thomas: It all came about back in the 1990s, when hospital restructuring was first started. Their unions sat with the employers and basically—one of my staff members, a guy named Bob Cook, was the lead negotiator; he was the talking head for the unions—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Smokey Thomas: —and this process was designed by unions and the government. It has stood the test of time, so there's no point in changing it now.

Mr. Ted Arnott: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott. To the NDP side, to Ms. Forster.

Ms. Cindy Forster: Thank you for being here. The PSLRTA actually applies to 444 municipalities, 72 school boards, 90-plus hospital systems, 14 CCACs and 500 nursing homes—hundreds of thousands of employees—at a time when the government continues to reduce budgets by 6%, or freeze budgets, as they've done in the hospital sector. My questions are kind of around that piece.

My first question is, were you formally contacted as a stakeholder and consulted on Bill 109 at the time it was going to be tabled, a month or so ago?

Mr. Smokey Thomas: No.

Ms. Cindy Forster: Are you concerned that—well, you actually spoke to that one, about it not addressing the issue of the non-union piece. It was suggested in a

deputation this morning that in fact there are long-lasting morale issues following PSLRTA votes in the health care sector under PSLRTA. Can you comment on that?

Mr. Smokey Thomas: That's just a poor excuse to try to get what you want. If there are long-lasting bitter feelings, it's because a couple of unions—and one in particular that's in favour of this—their behaviour during them is atrocious. In fact, hospitals have had to call the police in. CUPE, ONA and OPSEU: We behave in a way that's professional. I can't say that about the other two unions.

I'm not aware that there are any long-lasting hard feelings. But if it's shoved down your throat by the government, I can guarantee you there will be bitterness forever, right? You already have an unhappy workforce in hospitals, because they're treated like dirt by the bosses, so if you want to make it worse, just do this one.

Ms. Cindy Forster: There was some suggestion, both by a government member and by one of the deputations this morning, that they're working on a percentage that would be less onerous. Can you comment on that?

Mr. Smokey Thomas: There is no percentage that's acceptable to us. If it's one or two members, they still have the right, under federal law, under the charter, to have that freedom of choice.

I'll just say that if they do this—I've talked to ONA and CUPE, and we're all lining up—we'll see them in court. And you know what? I'll bet you a dinner that we win.

Ms. Cindy Forster: Okay.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster. There are about 40 seconds. Go ahead, Mr. Gates

Mr. Wayne Gates: Smokey, how are you today? You know that I've been involved in the labour movement for a long, long time.

Mr. Smokey Thomas: Yes.

Mr. Wayne Gates: I think that maybe you'll agree or disagree with me that no matter what union you are, if you're providing a service to your members, they will always choose your union—not your union, but a union. Do you agree with that or disagree?

Mr. Smokey Thomas: Yes. My philosophy is this: If you work hard, and you represent your members well, and you win the hearts and minds of your members by working hard, they'll want to stay with you. If you don't, you're going to lose them in these votes, and that's your fault, not the members' fault.

Mr. Wayne Gates: Thank you.

The Chair (Mr. Shafiq Qaadri): Thanks, Mr. Gates and Ms. Forster. To the government side: Mr. Potts.

Mr. Arthur Potts: Mr. Thomas, thanks very much for being here. I appreciate very much the work that your members do in our hospital sector and elsewhere in the province.

You may know about me. I have a background in labour relations, a master's degree, and I wrote my master's thesis on expedited certification processes, so I'm actually a big believer in the vote, and a vote in every circumstance where it's at all possible.

But if we go down this route, I think we need to see this in terms of membership card evidence. It's typically the case with most unions that they prefer to see a certification based on membership cards, which is a 60% threshold.

Are you saying, as a union, that you would accept having a vote in every situation? You accept that, and you wouldn't prefer to see membership card evidence at the 60% level determine the support of a union?

Mr. Smokey Thomas: I'm not quite sure—

Mr. Arthur Potts: Well, let's put it this way. Let's go to your 60-40 argument: 60% are unrepresented; 40% are represented. Would you be satisfied if we had a vote in that situation, in which having no union was one of the options?

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Mr. Smokey Thomas: That's what the law provides for now.

Mr. Arthur Potts: Okay. So I think that's the answer to the question you were posing. It wouldn't be that the members would automatically lose their rights; they would have a chance in a representation vote—

Mr. Smokey Thomas: But the way it's written, the members would lose their union. The way it's written—

Mr. Arthur Potts: Only if the majority of the employees voted against the union. They would still have an option of voting for the union.

Mr. Smokey Thomas: No, no. There would be no vote. If it's 60% non-union—

Mr. Arthur Potts: No, I'm telling you that. Would you be satisfied if that were the case, if we had a vote in those situations?

Mr. Smokey Thomas: Yes. I want to vote every time. In that scenario, and every other scenario, we want a vote each and every time.

Mr. Arthur Potts: But you're not satisfied to know that over 60% of the membership card evidence shows favour for one union. Therefore you avoid the protracted legal or election proceedings by making a determination. You avoid what is a problem in long certification vote processes: the animosity, the evidence—you avoid that by just going with the membership base card evidence, which is the way it's done in construction at the moment in Ontario and the way that it used to be done.

Mr. Smokey Thomas: I don't like the way that construction does anything in labour, just so you know. For them to agree to let a unionized company use non-union—I don't want to go there.

All I'm saying is that workplace democracy dictates that you should have a vote. What you're talking about is, if CUPE has been in a hospital for 100 years and OPSEU has been in a hospital for 100 years and they merge those hospitals—every one of the workers got hired into a closed shop. So there is no card-based evidence to say what you're proposing, I believe.

What I'm saying is, there should always be a vote because that gives the workers a say. I've talked to some hospital CEOs, who will not speak up, but they say, "We like it the way it is."

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Arthur Potts: It's my understanding, in this legislation, that there will be a vote in every circumstance in which no union shows greater than 60%. So if they can show 60%, there's no vote; anything less than that—if it's 50-50, 55-45, half union, half non-union—you will have a vote.

Mr. Smokey Thomas: Well, what I'm saying is that there should be a vote every time; one member, one vote. That's what my union is built on. Not all unions are that way—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts, and thanks to you, Mr. Thomas, and to your colleague, for your deputation on behalf of OPSEU.

CANADIAN UNION OF PUBLIC EMPLOYEES, ONTARIO

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward, Mr. Hahn and Mr. Hurley, of CUPE, Ontario. Welcome, gentlemen. I know you know the drill very well: 10 minutes' intro and rotation by questions. I'll give you a second to be seated, and I invite you to please begin now.

Mr. Fred Hahn: Good afternoon, everyone. My name is Fred Hahn and I am the president of CUPE, the Canadian Union of Public Employees, in Ontario. With me today is Michael Hurley, who is our first vice-president, but also the president of our Ontario Council of Hospital Unions.

CUPE represents almost 250,000 workers in every community all across the province. We have workers in universities, social service agencies, municipalities and school boards. While on occasion there have been representation votes in those different kinds of services, the majority of our experience comes from the health care sector where we're proud to represent 70,000 workers in hospitals, long-term care facilities, homes for the aged and home care.

I believe you've got our brief, so I'll get right to the point.

Bill 109 has three distinct schedules, but today we'll focus exclusively on schedule 2, the Public Sector Labour Relations Transition Act, or PSLRTA.

Simply put, PSLRTA requires that when workplaces merge, the issue of which union will represent all of the workers in the new bargaining unit can only be settled by asking the workers themselves, and then allowing them to answer that question through a board-administered secret ballot vote. Schedule 2 of Bill 109 takes away the mandatory right of workers to have access to that vote. The assumption appears to be that if one bargaining unit going into a merger has 60% or more of the workers, then there's no need to have a vote, because we can predict the outcome. But the facts are very different, as is our experience.

Since PSLRTA began in 1997, CUPE has won and lost these votes, as have other unions that are affected. Sometimes we've won where CUPE members were only

a minority of voters; sometimes we've lost where CUPE members were the majority. But in every case, CUPE members have accepted the results because they were democratically arrived at by the workers themselves, and not forced on them by any government or any piece of legislation.

The right to choose is so important that it's actually spelled out in the purpose clause of the Ontario Labour Relations Act and the Public Sector Labour Relations Transition Act. Removing the mandatory right to vote in schedule 2, as it does, contradicts both the Labour Relations Act and PSLRTA, but we believe it would also violate section 2(d) of the Canadian Charter of Rights and Freedoms in terms of freedom of association, which must be truly free.

There is no good public policy reason for schedule 2 of Bill 109. When we've attempted to ask the government whether they have a good public policy reason, they haven't offered one, so in our view, schedule 2 should be withdrawn, plain and simple.

I'll turn it over to Michael.

Mr. Michael Hurley: Thanks, Fred.

Thank you very much for the opportunity to talk about this legislation.

First, let's talk about—if you don't mind—the hospital sector, where a majority of these votes were occurring. The workforce is predominantly female—85%—and already, that workforce operates with significant restrictions on their liberties: no right to strike and no right to refuse unsafe work in the same way as other workers. So I think you want to be quite circumspect in terms of imposing any additional restrictions on them.

This sector has been restructuring since the previous Conservative government established a restructuring commission and began the process of merging services. Those mergers have picked up pace, they've been very aggressive, and there have been many, many representation votes. I personally have been involved in many of them.

I would like to say that, in the cases where people lose representation votes, they lose them because they have failed to keep the loyalty of their members; either they haven't operated democratically or they haven't provided them with good service. We've lost units for that reason, and others have lost for that reason. Locking people into a union that they don't believe is democratic or represents them is profoundly unfair. It isn't the kind of remedy that you'd entertain for citizens, generally. We all have an opportunity to revisit our elected officials, and so should these workers.

These rep votes are not disruptive in any way. I think Smokey Thomas outlined what happens in the lead-up. We have tables in the cafeteria. We have meetings that people are invited to. We're not allowed to disrupt patient services by going onto floors and talking to people. We have meetings offsite. We might have them over for dinner. There's a vote. Are people unhappy if they lose? Activists may be. Do they assimilate? They almost all do. We have many fine activists working in

our union who at one time were members of another union. I have friends who were activists in CUPE who are now active in OPSEU, SEIU and other unions.

I raise the concern with you, as the restructuring picks up pace—for example in the South East LHIN, or in the Scarborough area or in other parts of the province—that this system that you're setting up allows the government, the LHIN and the employers to manipulate representation in terms of the timing of transfers of workers to a new entity, such that it never in fact triggers a representation vote, and leaves the employer, at the end of the day, with a compliant trade union with an inferior collective agreement that won't be outspoken.

I guess that brings me to my last point: When the three largest unions in the sector—ONA, OPSEU and CUPE—all with long-established collective bargaining relationships with the employers in long-term care in the hospitals and in mental health—oppose this change, and still, the change is rolling forward, we have to ask ourselves why. The only answer that I can find to that question is that people who have supported the government are being rewarded with a legislative change that will allow them to ensure that their market share will be preserved through restructuring, despite the fact that they would be otherwise unable to achieve that in a free vote, held properly as it should be. I say that with the utmost sincerity.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We'll now move to the NDP, to Ms. Forster.

Ms. Cindy Forster: So OPSEU has said they've got 150,000 members, CUPE has said they have 400,000 members, CLAC told us this morning they have 15,000 members in Ontario, and ONA, I know, has 66,000 members in Ontario. That's 620,000 members of unions that are actually opposing any change in this PSLRTA legislation.

We FOIed the Ministry of Health document that stated that there was no consultation done, with the exception of one stakeholder, and that, in fact, this issue is not even a problem. I don't see anybody here from any employers. I don't see the OHA here. I don't see anybody here from the nursing home sector or from the CCACs, which indicates to me that there isn't a problem.

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So I ask you: Were you formally contacted as a stakeholder or consulted before Bill 109 was actually tabled a couple of weeks ago?

Mr. Fred Hahn: No, we weren't. On this question, as we said, we can't discern what public policy initiative or problem this schedule of the bill is trying to solve. When we've asked that of ministry representatives—we have yet to find an answer.

Ms. Cindy Forster: Thank you.

The Chair (Mr. Shafiq Qaadri): Go ahead, Ms. Gretzky.

Mrs. Lisa Gretzky: I guess my question is more around membership of two unions in a merger. We all know that a happy workplace is a productive workplace; as Mr. Gates said, happy members will stay with you.

My question is, having been through mergers where you've lost votes: What is the morale of the members like in a situation if it's a majority membership merger, so they're now in a union that they don't necessarily want to be in, as opposed to a majority vote situation, where the majority of members vote and choose the union they want to belong to? What would you say the effects would be, both ways?

Mr. Michael Hurley: Well, our members are always disappointed—the activists—when they're unsuccessful. They've been active in their union for their whole life, they have a whole family of activists who they know and work with, and they're losing all that, and they're very depressed about it. But they're activists, so at the end of the day they start going to meetings. At the end of the day, a good union welcomes them into the new union, they become active and that's it.

But we've had that opportunity for closure. We've had a process. It has been a fair process, monitored by the state. It makes it all okay.

Mr. Wayne Gates: Just quickly—do I have time?

The Chair (Mr. Shafiq Qaadri): Ten seconds.

Mr. Wayne Gates: Ten seconds. You have no problem with the firefighter part of the bill? You have no problem with the WSIB part of the bill? This is strictly that this part of the bill should be withdrawn. Am I correct?

Mr. Fred Hahn: That's-

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster, Mrs. Gretzky and Mr. Gates. To the government side. Mr. Potts?

Mr. Arthur Potts: Thank you, Chair. Thank you, Mr. Hurley and Mr. Hahn. Great to see you again.

I'd like to go back to this: I'm delighted to hear about workplace democracy and the interest we have in making sure that there's a vote. This goes to every certification. If you went into an organization that had 20 employees, in the olden days, you had to sign a membership card, and at 60%, there would be no vote; it would be an automatic cert.

So you're supportive of the current legislation and a new certification process, that a quick, expedited certification vote is the right way to go, based on votes and not just membership card evidence?

Mr. Fred Hahn: I was listening carefully to your question in the previous presentation. What I want to be clear about here is that I think that there is a difference between the organization of a non-unionized workplace and a workplace like in health care, where we have workplaces that have been organized for 30, 40 or even many longer years, where workers are picking which union they want to represent them.

In relation to the organization of a new workplace, card-check certification makes perfect sense. If you can actually get somebody's signature on a card—

Mr. Arthur Potts: So it's a bit different, then. You don't believe in workplace democracy in that circumstance, but you do in this circumstance. That's fine. That's—

Mr. Fred Hahn: No, no. I want to correct you. In fact, it's quite democratic. When any of us signs a mortgage, a legal contract, a binding situation—you're putting your name on a card and you're saying, "I choose to be represented by a union," and that signature should be as binding as it is when you sign a mortgage or when you sign any contractual legal obligation.

Mr. Arthur Potts: So let's take it to the other end of the collective bargaining process. Once a union is in place, if there's an application for a new union to come and represent the employees, maybe you can take our committee through what that process looks like, and in a decertification or in a change of union cert during the open period of a collective bargaining agreement—you still have that opportunity. You could move into a different union shop during that open period, sign up members and get a vote.

Mr. Fred Hahn: There is an understanding between unions through the Canadian Labour Congress about how it is that we operate together in workplaces. What we are talking about here, schedule 2 of Bill 109, is actually about a reorganization of a workplace that causes this to happen. It's not something that the workers themselves have caused to happen. It's not something that the unions have caused to happen. It has happened by a reorganization caused by the government or the funding process.

So, as a result of that, the history that we have enjoyed in the province is that workers then have the ability to have a democratic vote. What we think, and what we believe is required—

Mr. Arthur Potts: So the history I'm hearing, the agreement in the congress, is that you don't use that open period in order to replace unions.

Mr. Fred Hahn: No, we do not.

Mr. Arthur Potts: Okay. You had a question?

Ms. Indira Naidoo-Harris: Just a really quick comment. Thank you so much for coming in. It's really good to hear your concerns and your thoughts about Bill 109. I just wanted to put on the table one of the reasons why I feel the government is looking at this option. It's really about the circumstances under which health workers are working. They are in hospitals in emergency situations where life-and-death decisions need to be made. I think on a certain level—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts and Ms. Naidoo-Harris. The floor now passes to the PC side. Mr. Arnott.

Mr. Ted Arnott: I want to thank you gentlemen for coming in today to express your views on behalf of CUPE and also thank your members for the good work that they do in our communities.

You've raised some very salient arguments with respect to the issue around merger-driven representation votes and you've raised some troubling concerns. We just heard from OPSEU that they believe that this is completely unconstitutional and wouldn't survive a court challenge. Would you agree with that?

Mr. Fred Hahn: Indeed. That's why we rather briefly talked about the Canadian Charter of Rights and the

freedom of association. We believe that it's quite clear that that freedom of association has to mean something, and in a situation like this, having the ability to vote would, in our view, clearly be required.

Mr. Ted Arnott: It would seem to me that having these representation votes probably leads to greater acceptance of the outcome, whatever it is, amongst the members over time. Also, it's been argued to me that it leads to greater accountability from the leadership of the various unions to its members. You would agree with that, I assume.

Mr. Michael Hurley: Absolutely. I can think of one large urban hospital that we almost lost despite outnumbering the opposition by 3,000 to 50. Why did we almost lose it? Because we hadn't been paying attention to those people. Should they be locked in for the rest of their lives to a union that they don't feel represents them? I don't think so.

To the point about the hospitals being emergency situations, these people deserve to have the opportunity to be able to vote. They deserve that right. They're able to do that without that being at the expense of patient care.

Mr. Ted Arnott: Do you think that the government is doing this as a form of political payoff to some of the unions that have supported them?

Mr. Michael Hurley: My view is, absolutely, yes. There is no credible explanation that's been mounted by the various government officials who we've met with, but we have been told that it has been requested by some unions that, coincidentally, are supportive of the governing party. Maybe that's the explanation that makes the most logical sense.

Mr. Ted Arnott: It's my understanding that the Minister of Labour's office informed some unions, at least, in 2013 that they would not be proceeding with this kind of a legislative approach. Is that true?

Mr. Fred Hahn: That's right. This idea was floated when we were asked back in the day about our view of it. When we presented our view, we were told this would not be happening.

Mr. Ted Arnott: That was before the provincial election.

Mr. Fred Hahn: Yes.

Mr. Ted Arnott: And something different has happened afterwards.

Mr. Fred Hahn: Yes.

Mr. Ted Arnott: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott, and thanks to you, colleagues from CUPE, Mr. Hahn as well as Mr. Hurley.

ONTARIO NURSES' ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward from ONA, the Ontario Nurses' Association, Ms. McIntyre and Mr. Walter. Welcome. You know the drill very well. I invite you to please begin now.

Ms. Elizabeth McIntyre: Thank you. My name is Elizabeth McIntyre. I am a lawyer who has worked in labour relations in health care in this province since 1974. I am here on behalf of the Ontario Nurses' Association and I'm here with Lawrence, who is a staff member at the Ontario Nurses' Association.

I'm sure most of you are familiar with ONA. It is the union for nurses since 1973. It represents 60,000 front-line RNs, nurse practitioners, RPNs and other allied health professionals, as well as 14,000 nursing students. ONA's members work in all subsectors of health care: hospitals, long-term care, public health and community home care.

In the majority of those places, PSLRTA applies. That's why we're here, not with respect to the other provisions of Bill 109, but with respect to schedule 2 and the proposed amendments to PSLRTA. ONA is opposed to those amendments.

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One thing that's constant in health care in this province is change. The health care system has been undergoing change since at least the mid-1990s, and obviously that change has a significant impact on ONA's members who are on the front line, delivering health care in the face of change.

PSLRTA was first enacted by the Harris government in 1997 to put in place specific successor rights provisions to respond to the changes they were making in health care, particularly mergers of hospitals. Then, in 2006, in connection with the enactment of the integration act and the creation of LHINs, PSLRTA was amended to cover not just hospitals but all subsectors of health care and to respond not just to mergers but to integrations and the labour relations consequences.

I have been involved in many of the PSLRTA applications from the beginning and I can tell you that, on the whole, as much as it was despised when put in place by the Conservative government initially, it has actually worked quite well. It works to redefine the bargaining units, and that's made necessary by the restructuring that's happening, and in determining the bargaining agents who are, then, the representatives in those new bargaining units.

I can say that from what I've seen, the unions, while they're not happy with the restructuring, have been relatively happy with the way PSLRTA works. An integral part of that has been the running of votes to determine which of the existing unions should hold the bargaining rights on a go-forward basis.

You've heard about the fact that the unions worked together from the outset to establish very efficient rules around these short campaigns where the employees affected get information and then they get to vote. It is not disruptive, by and large, and to the extent that the committee has been led to believe otherwise—I'm not sure where that's coming from because we have not seen it.

We take the position that the amendments that are being proposed are unnecessary and they're contrary to the fundamental principle of workplace democracy. If you look at the goals under PSLRTA, you will see that they talk about facilitating collective bargaining between employers and trade unions that are the freely designated representatives of the employees. So this provision is in fact contrary to the purposes of the act that it seeks to amend.

So why is ONA opposed to it? The fundamental principle of workplace democracy and the circumstances of determining the wishes of the voters in situations where you're merging existing bargaining units where you've had bargaining rights that have been in place for decades is very different than determining workplace democracy in an un-unionized workplace, where you've got employees held captive by employer influence and the debate is whether cards or a vote is the best way to go. Unions say cards are. That is very different than the situations where you're merging existing workplaces. That's the first fundamental reason.

I can tell you that for the workers affected, it's bad enough to be subjected to this constant change and uncertainty as to what's happening to their jobs and their workplaces without having their union taken away from them and without even having a voice in that. And yes, it's much easier for workers to accept a change in union representative if they've had a voice in the vote. That's the first thing.

Secondly, we say that there's absolutely no reason to eliminate the democratic right that's been there and has been used since the act was put in place. What was said to justify this was that it would help reduce the potential for disruption and delay. That came as a great surprise to ONA, because the votes are not a source of disruption and delay. In fact, PSLRTA has caused some delay, not because of votes but because of cases where there is litigation. I should know this because I'm responsible for a number of them.

It's not about the votes; it's about the fact that there's a provision in the act that says if there is a PSLRTA application that's proceeding, then no one can apply for certification rights. In one case I was involved in, SEIU's application for certification was delayed for some time because of that provision. It had nothing to do with the section that is now being sought to be amended.

The fact that that is being held out as the reason for change is not a credible reason. In fact, if you understand the way lawyers think and work—and union organizers—you'll realize that, in fact, if you put in an arbitrary cut-off—let's say 40% or 30%—in any case that is close to the line, that's going to cause the parties to try to take a position to change the numbers, because they can say the bargaining unit description should be this versus that; these positions, these employees should be taken on or off the voting list. That is what's going to lead to disruption and to delay in resolving these things. That is what's going to happen if you put this amendment in place.

With respect to those cases where a union may have very minimal support, the parties can—and do, in fact—

sometimes withdraw voluntarily their right to be on the ballot. But that should be the choice of the bargaining agent and the workers, and not imposed by some arbitrary cut-off set by the Legislature.

I was going to give you two examples to prove our point here. One is from the restructuring of the community care access centres—

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Elizabeth McIntyre: —from 43 down to 14. ONA was successful in a case where it represented under 40%. We've got this vote coming up in Kingston, where OPSEU represents 61% of the nurses and ONA represents under 40%. OPSEU and ONA are quite happy to see their members choose on the basis of a campaign.

Finally, I would say to you that, in fact, I think this legislation is in trouble from a constitutional point of view. We've included our comments on that in our brief. I think there is quite a credible challenge to this legislation in light of the trilogy of charter cases that have been released by the Supreme Court of Canada in 2015. I'm not sure the government wants to go down that road. It would be fun for me.

Mr. Mike Colle: Lawyers always have fun.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. McIntyre. To the government side, to Mr. Colle.

Mr. Mike Colle: Thank you. You mentioned this situation that ONA is having with OPSEU, where they have 61% and ONA has the rest—

Ms. Elizabeth McIntyre: It's 39%.

Mr. Mike Colle: It's 39%? You mentioned that there's a campaign that would take place. Could you explain this concept of a campaign?

Ms. Elizabeth McIntyre: Okay. Under the ground rules that the unions came up with, way back when the Conservatives first introduced this, we agreed there would be a two-week campaign period. During that campaign period, both unions could have a table in the cafeteria of the hospitals. They could distribute campaign material. There would not be a disruption of patient care. So you'd have an informed electorate who then get to vote.

It all goes quite quickly and is not—I don't know how anybody can claim this is an expensive process. It isn't.

Mr. Mike Colle: I guess, in some cases, it seems—whether it's Unifor or SEIU—they think that this is an onerous, disruptive process. Now, why would they not agree that this is as cordial as your experience seems to be?

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Ms. Elizabeth McIntyre: That's a very interesting question to which I don't know the answer. But I can tell you this: I was counsel to the nurses' union in Nova Scotia last year when they tried to go through restructuring and imposing bargaining units without votes. It caused all the workers to be out on the street. Unifor took a position that there should be a vote in every case, and there was so much political pushback on that that the Liberal government withdrew their entire bill with respect to imposing bargaining agents on unwilling

members without votes. So, curious—I don't know the answer.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. Martins, you have 45 seconds.

Mrs. Cristina Martins: I just wanted to first off thank you for being here today. I have great respect for the nurses of our province and all the care that they provide. I have a few nurses in my family.

I just wanted to get, perhaps, your perspective on—the legislation that is currently before us that is being proposed is perhaps not very different, if not similar, to what we actually see in Saskatchewan and Alberta. Why is Ontario different in that this would not work? Why is that?

Ms. Elizabeth McIntyre: The legislative structures are very different across the country. I spent a fair bit of time looking at the various pieces of legislation across the country when I was on the Nova Scotia case—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Colle and Ms. Martins. The floor now passes to the PC side: Mr. Arnott.

Mr. Ted Arnott: Thank you very much for coming here today to make your views known on Bill 109, and thank you to your members for the outstanding work that you do in all of our communities all across the province.

I think, again, you've made some very powerful arguments in favour of continuing to have merger-driven representation votes, as have some of the other unions that have come before us today. I would again make the point that it would seem to me that if you have a free and open democratic vote in these situations, over time, most likely, you would have greater acceptance of the outcome. Would that be your contention as well?

Ms. Elizabeth McIntyre: Absolutely. Absolutely.

Mr. Ted Arnott: One of the previous presentations that we heard today said this: "Well, such-and-such political party got the support of 60% of the vote in the last election so we'll take a pass on having an election this year," suggesting that if indeed that was the statement that was made to a political party, it would be rejected out of hand. I would assume that you would concur with that as well.

Ms. Elizabeth McIntyre: Absolutely, and in fact the argument is even stronger because, in many of these cases, those bargaining rights were established decades ago, when many of the current employees didn't have a say in it, so it's not like a recently signed card. This was a certification that took place decades ago.

Mr. Ted Arnott: You would anticipate, I'm guessing, that there's going to be quite a significant number of mergers in the next year or so, based on statements that have been made by the Minister of Health. Do you think these two things are connected, this provision in Bill 109 and what the government may be planning?

Ms. Elizabeth McIntyre: I can't speak to the legislative agenda, but I do agree that there will be a number of integrations where the act applies, and it should apply as it's currently written, in my view.

Mr. Ted Arnott: Lastly, we had a suggestion by one of the previous presenters that this provision in Bill 109

may in fact be political payback to certain unions that have supported the government. Would you be prepared to comment on that, or speculate on that?

Ms. Elizabeth McIntyre: I have no comment.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott. To the NDP: Ms. Forster.

Ms. Cindy Forster: Thank you for being here, Liz and Lawrence. Was ONA formally contacted or consulted at the time Bill 109 was tabled?

Ms. Elizabeth McIntyre: No, and in fact when it was tabled, it came as a great shock. What is this? There is no

problem to be fixed.

Ms. Cindy Forster: Was ONA told by the Ministry of Health, during the minority government in 2013, that they would not be proceeding with any similar type of legislation at that time?

Mr. Lawrence Walter: By the Ministry of Labour.

Ms. Cindy Forster: By the Ministry of Labour?

Mr. Lawrence Walter: Yes.

Ms. Cindy Forster: I know that both of you have been involved in many PSLRTA votes over the years—as had I. In the 20 years that this legislation has been in place, have you ever found it to be extremely onerous in terms of union finances, in terms of human resources, from the union side or from the employer side?

Ms. Elizabeth McIntyre: Not with respect to the votes. There have been other issues, but I've never seen a case where the vote itself has led to litigation or been

contentious.

Ms. Cindy Forster: Okay. Can you, in your maybe two minutes that you have left, comment on the success of a charter challenge, based on the recent decisions that

you've outlined in your document?

Ms. Elizabeth McIntyre: Well, of course I can't guess what the courts are going to do, but we do know that they have now, through this recent trilogy, established that the freedom of association in the labour context process is actually a meaningful one. It establishes the right to belong to and maintain a trade union, to join a trade union that is of their choosing and independent from management. This case would be an extension of that.

But to address the issue about legislation in other jurisdictions, including Saskatchewan, I can tell that that legislation was passed prior to these cases being decided, and those cases being decided was a significant factor in the government of Nova Scotia withdrawing their "restructuring without votes" legislation.

That's all I can say.

Ms. Cindy Forster: Thank you. Well, Ms. Martins will have to read the Hansard to get the answer to her question.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster, and thanks to you, colleagues from the Ontario Nurses' Association, Ms. McIntyre and Mr. Walter.

MR. L.A. LIVERSIDGE

The Chair (Mr. Shafiq Qaadri): I'd invite our next presenters to please come forward: L.A. Liversidge,

Barristers and Solicitors, Professional Corp., Mr. Liversidge and Ms. Miller. Welcome.

Mr. L.A. Liversidge: Thank you very much.

The Chair (Mr. Shafiq Qaadri): You know the protocol. I'd invite you to please begin now.

Mr. L.A. Liversidge: Thank you very much, and thank you for this opportunity to speak to the committee—

Interjections.

The Chair (Mr. Shafiq Qaadri): Colleagues, might we have a little silence for our presenters, please?

Mr. L.A. Liversidge: I'm going to be focusing on schedule 3 of Bill 109, which amends the Workplace Safety and Insurance Act rather significantly.

I've been involved with the Ontario workers' compensation scheme now for about 42 years and have been involved in pretty much every major reform since 1985. That includes the reforms of 1990, 1995 and 1997,

and anything that has happened since then.

Bill 109 is an omnibus bill, with schedule 3 bearing little connection to schedules 1 and 2. I'm reminded of comments advanced by a former leader in the Legislature in response to a government omnibus bill under consideration at that time. She said this: "I have a real problem with omnibus bills.... It's because the omnibus bills—the parts we miss, the parts we couldn't debate, the parts that the public wasn't aware of—come back to haunt us." That was Lyn McLeod, on November 19, 2002. I respectfully suggest that schedule 3, if passed, will come back to haunt us.

I'm going to focus, as I mentioned, just on schedule 3. I'm not going to touch on the other elements of Bill 109. In the paper which I presented, I outlined, under the first part of that—there's a general, quick overview, and there are some parts of schedule 3 which I support. I support schedule 2, the adjusting of the earnings basis for death benefits, and I offer no opposition to section 6, the codification of the Fair Practices Commission, which currently exists and is currently operating as a function of WSIB policy. But I will be touching on sections 1, 3, 4 and 5 of schedule 3. What these attempt to do, in my reading of it, is to addresses alleged concerns of what has been coined "employer-induced claim suppression."

Allegations of employer-induced claim suppression are not really new. We've been hearing about them in the workers' compensation scheme since the inception of experience rating about 30 years ago. Those allegations surfaced in a pretty dramatic fashion during the 2010-11 investigation by Dr. Harry Arthurs in his funding review of the WSIB, and were profiled in his report, Funding Fairness. He outlined some anecdotal allegations in that particular report.

Those allegations, untested by the rigours of normal process, proved a powerful narrative, notwithstanding an earlier study triggered by precisely the same charges, a 2005 study by the Institute for Work and Health, Assessing the Effects of Experience Rating in Ontario, said this: "The large majority of employees stated that they are being encouraged to report accidents and

incidents and are being offered suitable modified and early return to work." They did not find this to be a particular problem.

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In 2012, I believe in response to the Arthurs report, the WSIB commissioned Prism Economics and Analysis to investigate the overall question of claim suppression. The Prism report, in my reading of it, was unable to support its provocative conclusion that "claim suppression appears to be a real problem" with evidence that rises to any acceptable standard. It defines claim suppression as "actions taken by an employer to induce a worker not to report an injury" or to minimize the report of that injury.

I think that's a critical place to start: that an employer must induce a worker not to report or to under-report. It is clear that the employer, then, would be acting with what is commonly referred to as intent. So it's not an innocent act. We're not talking about acts of omission; we're not talking about employers who are not aware, who are not informed or where a lack of reporting is driven by a lack of knowledge. We're talking about employers who, with eyes open, are doing the wrong thing.

The Prism report infers—rightly, I contend—that there must an intention behind the employer's action and it's a deliberate act on the part of the employer. It is important to note, though, that these types of actions—the non-reporting of an injury—are already an offence under the Workplace Safety and Insurance Act. In fact, the ability to suppress a claim and to coerce a worker to do so would also be a mens rea offence under the Workplace Safety and Insurance Act.

Yet the Prism report, upon which I believe Bill 109 is based, fails to credibly introduce a single motivation explaining the unlawful behaviour. In fact, it says this: "There is no strong evidence to support credible inferences on the motivation for claim suppression." Notwithstanding the conclusion that "claim suppression appears to be a real problem," the Prism report itself says, "It is not feasible to develop even a weak estimate, let alone a credible estimate, of the incidence of employer-induced claim suppression."

The one potential, rational explanation could be experience rating. I referenced the Institute for Work and Health 2005 study that did not find any correlation, nor could the Prism report find a correlation between this

employer behaviour and experience rating.

The Prism report even examined WSIB prosecution and enforcement files, where active prosecutorial action or investigation had commenced and they were unable to—I'll read right from the report—"provide any conclusive evidence on employer motivation for claim suppression."

So where does this lead us? The Prism report purports to convince that while claim suppression is "a real problem," it admits that there is no strong evidence to explain and there's no evidence to advance a weak estimate, let alone a credible estimate, of the incidence of employer-induced claim suppression. The report even

notes that "employer inducement (an essential component of suppression) may not account for the preponderance of non-submissions or under-reporting."

The premise upon which Bill 109 is based, I respectfully suggest, is a bit of a false premise. It's chasing a problem that, in reality, is not existing. It is using a very strong sledgehammer. But it is also approaching the idea of claim suppression in a rather interesting fashion. The Prism report characterizes the purpose of the research that it was designed to undertake, under its instructions from its client, the WSIB, as "to identify anomalies in the file records which are suggestive of a risk of claim suppression, though not necessarily proof that claim suppression occurred."

So long as there is no proof that it cannot happen or if there is any risk that it can happen, then the question, I suggest, becomes the conclusion. But proving a negative is an impossible onus. In philosophy, such expectations are rightly disparaged as Russell's teapot and, in law, are addressed under the general rubric of burden of proof. If the legal standard was applied in this case, with respect to the allegations of claim suppression, there would be a conclusion that it was unproven, and the matter would be put to rest. Instead, we see the opposite result.

The WSIB responded to the Prism report, and I outline that in my paper. They responded to the Prism report, in my opinion, in a responsible, prudent, intelligent, proper fashion. They indicated that, "Well, we're not going to ignore this; we're going to address this. There seems to be an issue that warrants attention by the Workplace Safety and Insurance Board, and it is getting attention by the Workplace Safety and Insurance Board."

It's my respectful submission that there is insufficient reason to create a new offence or to increase the board's investigative powers when the present statutory regime adequately responds to any employer misconduct. And it's my suggestion that schedule 3 is going to prove to be a problem, give the boards extraordinary powers—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. L.A. Liversidge: —and Ontario employers will be paying an inordinate price for this. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Liversidge. We'll go to the PC side to start. Ms. Scott.

Ms. Laurie Scott: Thank you very much for appearing here before us today and for your eloquent presentation on a side we haven't heard very much about on Bill 109.

I'll give you some more time to expand on the fact. You're saying that if schedule 3 passes—how do you expect the WSIB will approach this?

Mr. L.A. Liversidge: Well, that's a good question. That's an excellent question.

Ms. Laurie Scott: Following up on your presentation.

Mr. L.A. Liversidge: First of all, right now the WSIB is addressing this problem. It's not as if they're asleep at the switch. They're not asleep at the switch; they're fully engaged in this. They have been fully engaged in this for some time. They are trying to address this problem. They realize this is an undefined problem. So they've got a problem of how to focus on this, and they've concluded

that the number one source of problems of claim suppression comes from employers who are not registered with the WSIB. This bill isn't going to do much with that.

The WSIB of Ontario is already going after those employers, and rightfully so. But the other point that the board makes in its response to the Prism report is that it's going to address this through employer education. That fits, I think, with the findings of the 2005 Institute of Work and Health report.

Where I do have a worry—a serious worry, a significant worry—is that schedule 3 of Bill 109 gives the board very broad, powerful, undefined powers of investigation. In effect, the WSIB investigator—the police officer, if you will—can actually determine what the offence is because the legislation says it is at a minimum this, and it could be more than that. I think that this will be a huge problem as it unfolds over time. It's a serious sledgehammer to address a problem that does not exist to the magnitude feared—or at least, one could infer from Bill 109. I'm not suggesting that claim suppression does not exist. It does, but it is not suggested that you have a compliance issue. You're seeing the rate of employer non-compliance on the rise, and therefore you could, I think, reasonably conclude that the current regulatory and prosecutorial framework is not working-

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. L.A. Liversidge: —is not having its designed and desired effect, so therefore you go to upping the ante on the penalties and creating new offences. That's not where we are. There's no such evidence and no such evidence has been obtained, even though this has been an active worry for 30 years.

Ms. Laurie Scott: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster. We'll now move to the governing side.

Mr. Mike Colle: No, it's the NDP side.

Ms. Laurie Scott: That was their question.

The Chair (Mr. Shafiq Qaadri): Oh, I'm sorry.

Mr. Mike Colle: You're out of order, Mr. Chairman. *Interjections*.

The Chair (Mr. Shafiq Qaadri): So it's the NDP's turn. Thank you; it's getting late.

Ms. French, do begin.

Ms. Jennifer K. French: Thank you very much, Chair.

Welcome to Queen's Park. Thank you. I appreciate your presentation, and I was glad to see that section 2 of schedule 3 was something you could get behind.

Mr. L.A. Liversidge: Yes, it is.

Ms. Jennifer K. French: That was one that is important to our caucus, as I had put forward Bill 98.

Mr. L.A. Liversidge: I saw that.

Ms. Jennifer K. French: Thank you.

My question to you is if you could maybe briefly explain your role in this, because that's a piece I don't have from the submission. Who are you?

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Mr. L.A. Liversidge: Okay. I'm a lawyer. My practice is focused almost exclusively on workers' com-

pensation. I've been involved in workers' compensation in one way or another for about 42 years.

In my practice, I represent both workers and employers, but primarily employers. I'm heavily involved on the policy development front on workers' compensation policy and legislative reform, and have participated from probably 1984 or 1985 on all major legislative reforms that have come forward on that.

I sit on two advisory groups set up by the current chair of the Workplace Safety and Insurance Board. Actually, they were structured initially by Steve Mahoney, and now by Chair Witmer. I believe there are four advisory groups overall, and I'm on two of those advisory groups.

I have strong connections with many employer trade associations involving workers' compensation advocacy, including one that I referenced in my submission, the construction employers council, which has addressed this issue and, in fact, as of this moment, has filed a written submission to this committee which should have been received by email, probably during my comments.

As well, I'm heavily involved with the service sector, transportation sectors, the hospitality sector and, notably, the construction sector, principally the Mechanical Contractors Association of Ontario.

Ms. Jennifer K. French: Thank you. I appreciate how in-depth you have delved here, especially when it comes to section 1, creating a new offence. As you have said, you feel there is insufficient reason to create a new offence based on employer-induced claim suppression. If that were a problem, if there was sufficient evidence to support that, would that be enough to create a new offence?

Mr. L.A. Liversidge: As I said just a few moments ago, if the evidence shows that the incident—that, first of all, you can quantify claim suppression and that it's a problem that is on the rise—of which there is no such evidence, certainly no such evidence that I'm aware of—then I guess you would want to seriously retool your regulatory and prosecutorial framework. But that's not the circumstance where we find ourselves.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. To the government side. Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Thank you so much for coming in and presenting to us today. We very much appreciate you coming here and giving us your thoughts on Bill 109.

I'd really like to start off with some of the things that we had been talking about. I'm sure you agree that we must ensure that those who work in Ontario feel that they are protected in some way from those who try to coerce workers from filing a WSIB report.

Mr. L.A. Liversidge: Absolutely.

Ms. Indira Naidoo-Harris: But currently, the WSIA does not have an explicit provision to deter or prohibit employers from impeding or coercing a worker from filing a claim with the WSIB. When you take that into account, and also take into account that evidence gathered by the WSIB suggests that employers will sometimes coerce or influence a worker into not filing a

claim so that the employer can avoid experience rating costs, you must agree that it is government's job to ensure that we are protecting workers and protecting their rights.

I was interested in some of the things that you had to say, because on the one hand you were suggesting that this isn't a problem, and yet on the other hand you said that you do agree that it exists. Surely you recognize that it is government's role to step in and ensure that we are protecting the rights of workers to be able to make these claims.

Mr. L.A. Liversidge: I lost track of all the questions in that. There were a lot. I counted about six. Let me try to address them as best I can from my memory of them.

In response to your questions: Does the government have a role and an interest so that employers don't coerce workers, with any mechanism, not to file a worker's compensation claim? Well, of course. Any thinking individual answers that question in the affirmative. Of course that's the case.

But that's not the question, and I reject outright the premise contained in your question that experience rating is seen as and linked to this as being the catalyst of the problem. It's not. There's no evidence of that whatsoever. In fact, just the opposite: There is not a single Canadian study that establishes a theoretical or actual linkage between experience rating and claim suppression. It's just not there, even though—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. L.A. Liversidge: —there have been hard-core allegations advanced over a period of three decades and ample opportunity for that evidence, if it did exist, to come forward. In other words, what I'm saying is that if this were the problem of a magnitude that would warrant this type of response—remember that there are current regulatory and prosecutorial frameworks in place—the evidence would be clear and convincing right now, and it's not. There is not clear and convincing evidence of this. There is not any evidence at all of any appreciable standard. There's an inference, there's a worry—

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Liversidge, and to your colleague Ms. Miller for your deputation on behalf of your firm.

TORONTO WORKERS' HEALTH AND SAFETY LEGAL CLINIC

The Chair (Mr. Shafiq Qaadri): I now invite our final presenters. Last but not least: Signor Bartolomeo and Signora Vannucci, of the Toronto Workers' Health and Safety Legal Clinic. You have 10 minutes, as you've seen. You're welcome to please begin now.

Ms. Linda Vannucci: Good afternoon. I'm Linda Vannucci. My colleague John Bartolomeo is next to me. I'm going to begin. We're with the Toronto Workers' Health and Safety Legal Clinic. Our clinic is a specialty clinic. We've existed over 25 years, funded by Legal Aid Ontario. Our mandate is province-wide, to represent workers who have health and safety problems in the

workplace, including injured workers. We appear before the Ontario Labour Relations Board for workers who are fired for raising their health and safety concerns at the workplace. So this issue of workers' compensation and hiding claims is very near and dear to us and something that we've heard a lot about directly from the horse's mouth, the workers, over these years.

Our clinic also does public legal education and law reform. Our clients are low-income people. They come from small, non-union workplaces. Sometimes they come from large workplaces through temporary staffing agencies. They probably fit under that rubric of vulnerable workers, and we advise them on their rights.

We think Bill 109 is a positive step in the right direction. In reference to schedule 3, we think there's some room for improvement to reach the goals intended by the amendments. In terms of claims suppression, if this was properly enforced, this section could constitute a major improvement and would deter employers from suppressing claims in the various manners described in section 22.1.

We've seen claims suppression first-hand. We've had workers tell us their employers tell them not to report their injuries. In some cases, they are compensated directly by the employer and told to stay home and not report the work injury. In other cases, the employer tells them to apply for employment insurance sick benefits because WSIB is just too complicated and their case probably won't succeed anyway.

On the EI benefits, of course, they're only getting 55% of their net wages, whereas WSIB is 85%. The employer benefits because there's no reported lost time claimed. It's the employer who benefits from this claims suppression.

I would challenge what my predecessor said: It's the experience rating which causes the employer to benefit.

I had another more egregious case of a labourer who fell from a scaffold and had a compound fracture. On the way to the hospital, the employer told him to advise the emergency staff that he fell at home, and he did this. He was a cash worker. This made it difficult for him to prove his injury was work-related. It was an uphill battle for him—as it was for the other examples that I just provided to you, especially if they end up with a permanent injury—to prove that his injury was caused at work.

The employer, as I said, also incentivizes workers in other ways. There are cases where just merely providing Tim Hortons cards for free coffee will cause co-workers to actually police the situation and discourage injured colleagues from taking time off work or from reporting to WSIB.

Interestingly enough, under the current legislation, although WSIB staff has the capacity to penalize employers who fail to report accidents—which is one manner of suppressing a claim—the enforcement is very lax.

We represented a worker who was fired just for saying he was going to file a WSIB claim. We took the matter to the Human Rights Tribunal, and the worker got a significant award, but in doing so we discovered something very interesting. We obtained the WSIB file, and a memo on the file by the case manager indicated that this same employer had hidden two other claims, was caught and was not penalized. On this, the third strike, the penalty was a \$250 administrative fine.

This was shocking, and it was shocking to learn that the matter was not referred for prosecution, because the current law allows for prosecution of an employer and a fine up to \$100,000 for not notifying the board of the accident. So it's the enforcement that counts here. The enforcement is very important. The current law would have allowed for enforcement in that case, which I thought was a particularly grievous case, and it didn't happen. Increasing the fine to \$500,000 is not going to be a positive move unless the board actually takes an aggressive stand in enforcing the new section 22.1 and the new section 155.1.

Just one last note: After the enforcement, what happens to the worker who has been reprised against? The cases that I laid out would fit a section 50 anti-reprisal case. These are cases that we take before the OLRB where a person is fired for raising health and safety concerns. The facts I mentioned might not fit into that, but on the other hand, they do fit the Human Rights Code definition of a disability, an injury for which a person claims WSIB benefits; they could claim those benefits. I guess that would be where the worker would resort to for a remedy in terms of lost wages, reinstatement and general damages.

I'll hand it over to my colleague now.

Mr. John Bartolomeo: Thank you. With respect to the amendments, I'm going to largely address the changes with respect to the Fair Practices Commissioner. Again, with schedule 3, we applaud the changes and the move forward to address certain inequalities in the system.

With respect to section 176.1 and the fair practices commissioner, our concern with this is the recognition that the WSIB needs an ombudsman, but the way it is currently proposed does not give that person the required teeth to actually hold the WSIB to task. In our submissions, we talk about the need to make this an effective office. By doing so, it must be independent and it must have control over its own mandate.

The legislation that is currently proposed allows the WSIB to appoint their own watchdog and determine what that watchdog is allowed to examine. For this to be an effective role, the fair practices commissioner must be independent of the WSIB. For this to have the confidence of the stakeholders, especially on the workers' side, the fair practices commissioner must be seen as independent and controlling its own mandate. To that end, we've proposed language that would make the fair practices commissioner an order-in-council appointment. It would also provide for a definite term. The language as I see it gives the board the right to let that person go as they see fit. For that reason, we thought it necessary to suggest a term.

As well, we expanded the scope of the function of the fair practices commissioner. Right now, I could take a complaint to the fair practices commissioner, but in some cases I skip that completely because I have no expectation of reaching a substantive result. So I skip that and go straight to the Ombudsman of Ontario's office, because I know that the way the fair practices commission currently self-limits itself isn't going to be a help for my client's situation. To that end, we suggest a control over its own mandate to determine what the fair practices commissioner thinks it best can handle.

I think, at that point, I'll turn it over to members for

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bartolomeo and Ms. Vannucci. We'll now proceed to the NDP, to Ms. French.

Ms. Cindy Forster: Forster.

The Chair (Mr. Shafiq Qaadri): Oh, Ms. Forster. Sorry.

Ms. Cindy Forster: Thank you. Thank you for being here today. With respect to the fair practices commissioner, which I believe has been in place since 2002, I've met with a number of groups over the past few weeks, since the tabling of Bill 109 and they haven't said anything differently than what I heard you say today. They don't even go to the fair practices commissioner, because they don't feel that any substantive discussions on any inequality issues actually come out of that office, that really the commissioner just plays lip service to these complaints.

Currently, commissioners of the Legislative Assembly are appointed through a unanimous agreement of all three parties. Would you see that as being an effective way to actually appoint the Fair Practices Commissioner?

Mr. John Bartolomeo: I would agree with that. That would be the most ideal. Our concern was taking it out of the hands of the WSIB. It should be with the people and,

by extension, through the Legislature.

Ms. Cindy Forster: Okay. The last speaker actually talked about there being no evidence of claims suppression. I raised this issue during the debate in the House. At a hospital system where I was actually the bargaining agent at the time, there was evidence of 700 claims over a period of time that came to our attention across three employee groups where claims were suppressed in each of those 700 cases. The only reason we found out about it was because when nurses—and nurses are not as vulnerable as the clients you're looking after in your practices—went to take a sick day, for example, because they had the flu, they didn't have a sick bank because the employer was actually using their short-term disability bank and paying them and not reporting claims.

Nurses and other health care workers told us that managers and occupational health departments were encouraging them not to file a claim, that they would be paid faster. They would get 100% as opposed to a lesser amount through WSIB. So I totally understand where you're coming from with that. In that case, there were no

charges laid. It was just, "Let's reinstate their sick banks and everybody go away and play happily in the sandbox."

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Cindy Forster: Clearly, there are cases of evidence, but WSIB has actually failed to report those cases in their reports on an annual basis. Would you agree with that?

Ms. Linda Vannucci: I would agree with that.

Ms. Cindy Forster: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster. To the government side: Mr. Colle.

Mr. Mike Colle: I want to thank both of you, especially Ms. Vannucci for your very pointed criticism of the previous speaker. I think we let him off the hook. He got in here and pontificated, gave one side of the story and walked out of here. Thank you so much for giving the other side of the story. I wish you were here to question him, but he's gone now.

We really do have to invest some legislative resources in—

The Chair (Mr. Shafiq Qaadri): Mr. Colle, I would just invite respectful language to members of the public as they testify before here, but go ahead.

Mr. Mike Colle: We have to invest legislative resources into this whole issue of claims suppression. Has that been your experience?

Ms. Linda Vannucci: Yes, I would agree with that.

Mr. Mike Colle: And right now, as it stands, there isn't enough legislative force in terms of stopping this practice that you find common or rare?

Ms. Linda Vannucci: I find it rather common, actually. In addition to improving law, as Bill 109 would do, my submission really is about enforcing the law once it exists. That is where matters fall apart, at the enforcement.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Potts.

Mr. Arthur Potts: Thank you both for being here. Particularly with respect to the Fair Practices Commissioner, I had the same deputation, and there's a written submission from Orlando Buonastella and Laura Lunansky whom I know and met with last week from the Injured Workers Consultants. They have that same concern you've raised. I think it's very important that we try to make all officers of agencies as independent as possible.

But if we can go back to that other gentleman, the previous speaker, you mentioned a couple of incidents. Are those one-offs or is this far more widespread?

Ms. Linda Vannucci: No. With the exception of the man who fractured his arm because there was no guardrail on a scaffold, the other three have happened repeatedly. They're examples of not just single cases of being told to go to employment insurance as opposed to reporting. That's happened multiple times over the years.

Mr. Arthur Potts: And do you think the \$500,000 fine that we're putting in is too onerous for repeat

offenders, having a chance to step up fines against corporations at that level? Is that too onerous?

Ms. Linda Vannucci: Well, I think there's some precedent for it because it exists in the Occupational Health and Safety Act for violations of that act on prosecution.

Mr. Arthur Potts: Great. Excellent.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts. To the PC side: Mr. Arnott.

Mr. Ted Arnott: Thank you very much for your presentation. It was unique and interesting, and you brought forward a perspective that I think that the committee needs to hear.

But I would ask about the issue of claims suppression. We heard just now—and you would have heard Mr. Liversidge's comments as well.

1530

Is there any empirical evidence that suggests that claim suppression is on the rise in Ontario? What would you have to say in terms of offering the committee some empirical evidence? Clearly, you know of some anecdotal examples, and I wouldn't dispute that it is happening, obviously, if you say so. But have there been any studies that show that it is indeed a big problem and perhaps on the rise?

Ms. Linda Vannucci: Interestingly enough, the report that he referred to, the Prism report, is referred to—I saw earlier the submission of our friends at Injured Workers' Consultants. Their submission refers to the Prism report as well, to prove the opposite, which is—I think it's cited in the Prism report—7% of employers suppressing claims. So I think there is some objective evidence, exactly in the report that was referred to earlier.

Mr. Ted Arnott: And it's already an offence to suppress claims under the Workplace Safety and Insurance Act, correct?

Ms. Linda Vannucci: It's an offence insofar as it's an offence for the employer not to report an accident that requires health care, or where there's lost time, within three days of that accident or injury. So, yes, that already is an offence. Under the new bill, this would be, I think, the employer counselling workers not to report.

Mr. Ted Arnott: In terms of the Fair Practices Commissioner, you're suggesting, I guess, that there needs to be independence or it's not going to work, right?

Ms. Linda Vannucci: That's our suggestion.

Mr. John Bartolomeo: That is correct. Having the office being beholden to the WSIB defeats the purpose.

Mr. Ted Arnott: All right. Thank you very much. I appreciate—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott. Just before dismissing our presenters: Ms. Vannucci, I'm hearing either Michigan or Chicago. I have to ask, which is it?

Ms. Linda Vannucci: Upstate New York, near Syracuse.

The Chair (Mr. Shafiq Qaadri): All right, thank you. Thanks for your deputation on behalf of Toronto Workers'—yes, Ms. Forster?

Ms. Cindy Forster: Just a question: What is the cut-off for amendments?

The Chair (Mr. Shafiq Qaadri): Yes, I'm about to announce that. Amendments are due at 12 noon on Monday, November 30. As you know, we'll be meeting for clause-by-clause on December 3 all day, from 9 to 10 and then 2 to 6.

Ms. Cindy Forster: Can I ask when the Hansard will be ready? Can Hansard be ready by tomorrow at noon, so that we actually are able to formulate amendments?

The Chair (Mr. Shafiq Qaadri): Hansard?

The Clerk of the Committee (Ms. Tonia Grannum): There's already a priority request for another committee, so we might be a bit more delayed.

Ms. Cindy Forster: Well, just for the record, the government is time-allocating all of these bills; they're pushing them through. So we need to have the Hansard. We need to have the deputations' records so that we, as official opposition parties, have the opportunity to actually make amendments to these bills. I'm just putting it on the record that we need to have the Hansard to do that.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster.

Mr. Mike Colle: We have written submissions too, don't we?

The Chair (Mr. Shafiq Qaadri): Yes. The floor goes to Mr. Arnott, please.

Mr. Ted Arnott: I agree completely with what Ms. Forster has indicated. If this committee process is going to be meaningful, there has to be some period of time, after the public hearings conclude, for the respective caucuses to consider the issues that have been raised at the public hearings, develop the amendments and present them to the committee, before they are considered at the clause-by-clause stage.

I would suggest that we don't have sufficient time in this circumstance to do the job that we should be doing as legislators. We'll scramble and we'll get our work done, but we won't have sufficient time to do the review that we would want to do normally.

I would just ask the government members to take that back. I understand the government wants to get this bill passed as soon as possible, but there still has to be a reasonable legislative process, including allowing the standing committees to do their work—

The Chair (Mr. Shafiq Qaadri): Thank you. Our presenters are officially dismissed. Thank you.

Ms. French, then Ms. Forster, and the government side.

Ms. Jennifer K. French: Yes. As Mr. Colle had pointed out, we have some written submissions, but certainly the questions and comments and discussion here are not reflected in those written submissions, nor did the presentations, obviously, follow the submissions verbatim.

I would again echo my colleague's point that if there's insufficient turnaround time to be able to process, then this is just an act of futility, or it's strictly for appearances. It really ought to be for the benefit of strengthening the legislation, ultimately.

The Chair (Mr. Shafiq Qaadri): Ms. Forster.

Ms. Cindy Forster: I would suggest that if, in fact, this is what we're going to see for the next two and a half years, the Legislative Assembly needs to go back and review how many staff they actually have working, so that we can get Hansards in a timely way. With the existing staff, I know that it's going to be difficult, so maybe they need to go back and look at hiring some people.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster. Just to let you know, they have two approaches for that request: One is to your House leaders and the other is to the Board of Internal Economy. I would encourage you to contact them directly. Mr. Potts?

Mr. Arthur Potts: I just want to correct the record. Bill 109 was not time-allocated, so let's be very clear about that. I appreciate that there's a tight schedule, and Hansard needs to be done in order to have a fair opportunity to review.

The second part I'd like to be clear about is that the time deadline for amendments is strictly administrative, that any one of us can bring an amendment the day of clause-by-clause and bring it forward. It just isn't as convenient for our Clerk—to have copies available for us to all work from.

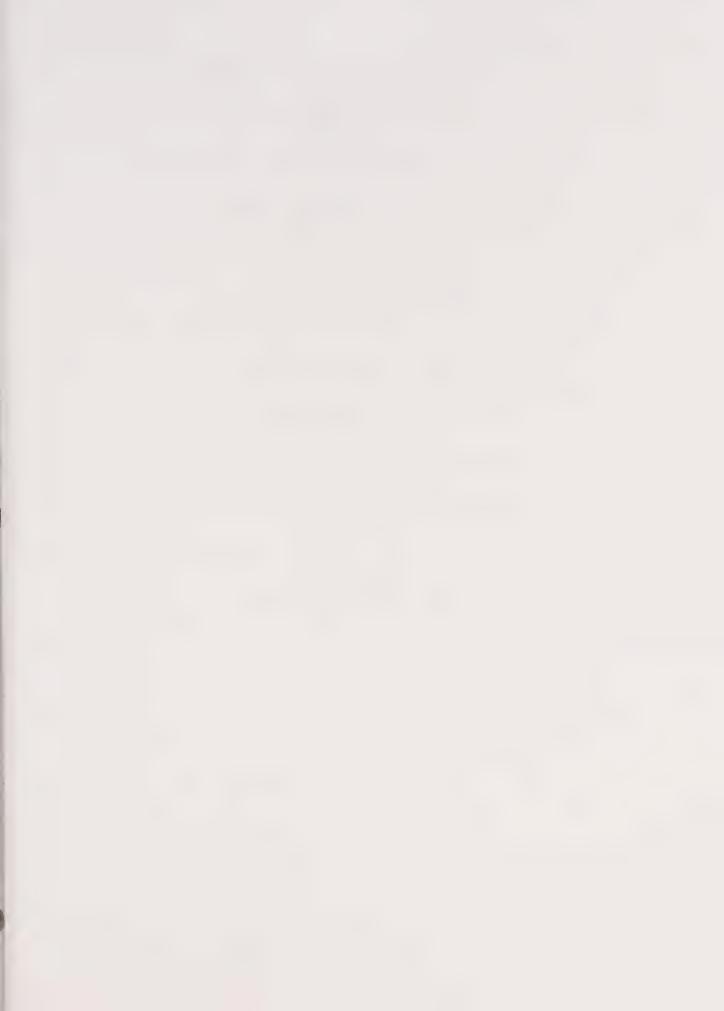
The Chair (Mr. Shafiq Qaadri): Ms. Forster?

Ms. Cindy Forster: I would say that that isn't correct. Not anyone can bring an amendment after the clock stops because we've had situations in this last year where we missed deadlines on amendments and we were not able. We missed deadlines five minutes after the time limit and we were not allowed to put any of those amendments forward.

The Chair (Mr. Shafiq Qaadri): All right. There are lots of things to deconstruct here. I think I'll perhaps do that off-line, if necessary.

Committee is adjourned. *The committee adjourned at 1536.*





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First Session, 41st Parliament

Official Report of Debates (Hansard)

Thursday 3 December 2015

Standing Committee on Justice Policy

Employment and Labour Statute Law Amendment Act, 2015

Assemblée législative de l'Ontario

Première session, 41^e législature

Journal des débats (Hansard)

Jeudi 3 décembre 2015

Comité permanent de la justice

Loi de 2015 modifiant des lois en ce qui concerne l'emploi et les relations de travail



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 3 December 2015

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 3 décembre 2015

The committee met at 0901 in committee room 1.

EMPLOYMENT AND LABOUR STATUTE LAW AMENDMENT ACT, 2015 LOI DE 2015 MODIFIANT DES LOIS EN CE QUI CONCERNE L'EMPLOI ET LES RELATIONS DE TRAVAIL

Consideration of the following bill:

Bill 109, An Act to amend various statutes with respect to employment and labour / Projet de loi 109, Loi modifiant diverses lois en ce qui concerne l'emploi et les relations de travail.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. Welcome to the Standing Committee on Justice Policy. As you know, we're here to do clause-by-clause consideration of Bill 109, An Act to amend various statutes with respect to employment and labour.

We have a dozen or so motions, but before we do that we'll move to the consideration of the schedules that are individually cited here, so not just section 1, 2 or 3, but to schedule 1 and, in that, of section 1.

I have received no motions or amendments to date, so may I consider it the will of the committee that schedule 1, section 1, carry? Carried.

Similarly, for schedule 1, section 2: no amendments or motions received to date. Schedule 1, section 2, carried?

Similarly, no amendments or motions received for schedule 1, section 3: Carried? Carried.

Okay, similarly, for schedule 1, section 4: no amendments or motions received to date. May I assume that it's carried? Carried.

I'll now call your attention to schedule 1, section 5. We have received PC motion 1 with regard to this particular area. I would invite Mr. Hillier to present PC motion 1.

Mr. Randy Hillier: Ted, do you want to speak to your amendment?

The Chair (Mr. Shafiq Qaadri): Mr. Arnott.

Mr. Ted Arnott: I'm sorry. I was a few minutes late.

The Chair (Mr. Shafiq Qaadri): No problem. Just to recap for you, we've already carried schedule 1, sections 1, 2, 3 and 4, for which we received no amendments or motions. We're now on PC motion 1, which concerns schedule 1, section 5. The floor is yours, Mr. Arnott.

Mr. Ted Arnott: I move that—

The Clerk of the Committee (Ms. Tonia Grannum): Sorry, you don't have a sub slip.

The Chair (Mr. Shafiq Qaadri): You need to be validated.

The Clerk of the Committee (Ms. Tonia Grannum): You can move the motion, Mr. Hillier.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: I move that subsection 52.2(2) of the Fire Protection and Prevention Act, 1997, as set out in section 5 of schedule 1 to the bill, be amended by striking out "or" at the end of clause (f), adding "or" at the end of clause (g) and adding the following clause:

"(h) serves as a volunteer firefighter for a fire department that is not operated by the employer;"

The Chair (Mr. Shafiq Qaadri): Thank you, Mr.

Hillier. The floor is yours for comments, should you wish it. Otherwise we'll pass it to colleagues.

Mr. Randy Hillier: I'm going to allow Ted to come back in here in a minute. My understanding of this amendment is that it would recognize and improve the employment certainty for volunteer firefighters who also work for professional firefighting associations.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Are there any further comments, and I'll wait for Mr. Arnott to return before we cast the vote. Ms. Forster.

Ms. Cindy Forster: My understanding was, when we had the deputation from the Ontario Professional Fire Fighters Association, that this really wasn't an issue. The issue of double-hatter and the way that it was actually presented in the government bill wasn't an issue, so I don't really understand why we need to actually add this new clause here, but perhaps Mr. Arnott can explain that to us when he returns.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster. The floor is open. Mr. Colle.

Mr. Mike Colle: As we heard before, the critical thing in this bill is that it does finally ensure that a union cannot unreasonably deprive someone of union membership in order to cause them to be denied employment as a firefighter. This has gone on for many, many years. Finally, we've got that in legislation. This motion basically does not really do anything to change that, but what it does do is it changes the language here that could be problematic. Really, the rights as enshrined already in the legislation give that protection to the so-called double-hatters from being deprived of union membership, which was happening. We do not support this motion.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Colle.

Mr. Arnott, if you'd care to speak on this amendment? *Interjection*.

Mr. Ted Arnott: I apologize.

The Chair (Mr. Shafiq Qaadri): No, that's fine.

Mr. Ted Arnott: I'm trying to do 14 things this morning at the same time.

Again, I understand my colleague, Mr. Hillier, has explained the rationale for the amendment, but I'd just like to reiterate: There are 19,000 volunteer firefighters serving in 93% of the province's fire departments today. Over the past 15 years, the union that represents full-time firefighters has, from time to time, in some cases, threatened to expel from membership some two-hatters who they identified as volunteering in their home communities or serving as part-time firefighters in their home communities, which in turn, in some cases, has meant the prospect of losing their full-time employment.

This is something I raised in the Legislature in 2002 by way of a private member's bill, which had a great deal of controversy associated with it, I admit, but at the same time I was pushing for the right of two-hatter firefighters to continue to serve as volunteers in their home com-

I know the government, with this particular Bill 109, has made some appropriate gesture towards legislative protection for these individuals. This suggested amendment was brought by the Christian Labour Association of Canada, and we indicated to them that we would bring forward their suggestion for an amendment to committee, and here it is. I support it and I would encourage other members of the committee to support it as well.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott. If there are no further comments on PC motion 1, we'll proceed to the vote.

Mr. Ted Arnott: Recorded vote, Mr. Chair. The Chair (Mr. Shafiq Qaadri): Recorded vote.

Ayes

Arnott, Hillier.

munities.

Navs

Colle, Delaney, Forster, Hoggarth, Martins, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): PC motion 1 falls. Shall section 5 of schedule 1 carry? Carried.

Also, if it's the will of the committee, I have a number of sections still within schedule 1. They are sections 6, 7, 8, 9 and 10, inclusive, for which so far no amendments or motions have been received. May I take it as the will of the committee that all of those so-named sections carry?

0910

Mr. Bob Delaney: Clarification, Chair? The Chair (Mr. Shafiq Qaadri): Yes. Mr. Bob Delaney: Is there a section 10?

The Chair (Mr. Shafiq Qaadri): There is a section 10 of schedule 1.

So just to be clear, what I'm currently asking for is for the parts of schedule 1—which are sections 6, 7, 8, 9 and 10—for which we received no motions or amendments to carry. Is that the will of the committee? Carried.

Shall schedule 1, therefore, carry? Carried.

We're still on schedules; we haven't graduated to sections. Of schedule 2, shall section 1 carry? We've received no motions or amendments so far. Carried.

Similarly, no motions or amendments received for section 2 of schedule 2: Shall it carry? Carried.

We have received a number of amendments for schedule 3 to which we will now proceed.

Mr. Ted Arnott: We didn't vote on schedule 2 in its entirety.

The Chair (Mr. Shafiq Qaadri): I do thank you, Mr. Arnott. Even with your late arrival, you're helping out in procedure, so thank you.

Shall schedule 2 carry?

Mr. Randy Hillier: No, hold on here for a minute. Is this not put in as an amendment? No, it isn't. Okay. I'd like to have a discussion on schedule 2.

The Chair (Mr. Shafiq Qaadri): Fair enough. The floor is open for schedule 2, although I am just reminded that we have actually voted on it. But go ahead.

Mr. Randy Hillier: Schedule 2 is the only part that really has been significantly controversial and has been raised in debate—in everybody's debate. I think even members of the government party were recognizing that there is some level of concern with schedule 2.

For the record, schedule 2 puts in an arbitrary number of 60% when there is more than one collective bargaining agent representing people in the same workplace. If 60% or more of the people in that workplace are represented by one union and there is an action to merge unions, people are denied a vote. It's totally contrary to everything that we know and understand and want in collective bargaining and with organized labour, where it allows a dominant union to usurp the rights of members in a subordinate union or in a smaller union.

I asked directly in the House why there is a need for this. I've asked often: What is the rationale that the government would suggest that we should take away the democratic rights of representation by up to 40% of the people in a workplace? I've not had any response during the debates on the rationale or the justification for this, and I am of the view that why we've not heard a response to these inquiries is because there is no justification. There certainly is no lawful purpose to be bringing in this arbitrary number. So I put that on the floor.

I'd like to hear from the committee members of the government why they think up to 40% of the people in a workplace should be deprived and denied their ability to choose who their bargaining agent ought to be.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier.

Ms. Forster, I notice that the NDP also has, I think, precisely the same notice, so if you'd like to comment, you're welcome to as well. But the floor is open.

Ms. Forster and then Mr. Arnott.

Ms. Cindy Forster: Actually, Mr. Arnott wanted to go first.

The Chair (Mr. Shafiq Qaadri): Or the reverse—or over there. Whoever would like to comment, the floor is now open.

Mr. Ted Arnott: Well, if the government is going to respond, I'll give them the opportunity. If they choose not to respond to Mr. Hillier's question, I appreciate the opportunity, Mr. Speaker, to put some comments on the record as well.

I received a copy of a letter from CUPE which was addressed to the Premier and the Minister of Labour on November 17 on this important issue. They make valid points. It was sent by Fred Hahn and Michael Hurley, and I think these points need to be put on the record and need to be considered by the government members before we take this vote:

"Dear Premier Wynne and Minister Flynn,

"We are writing today to ask you to withdraw schedule 2 of Bill 109, An Act to amend various statutes with respect to employment and labour.

"Bill 109, as you know, contains three schedules, two of which CUPE could be prepared to support. Schedule 2 of the bill, Public Sector Labour Relations Transition Act, 1997 (PSLRTA), however, is entirely unacceptable to us, as it should be to you, because it takes away the right of workers to vote to choose which, if any, trade union they wish to belong to and be represented by in the event of workplace mergers.

"Before setting out our reasons why these proposed changes should be withdrawn and Ontario workers allowed to continue to exercise the democratic rights now available to them under the existing statute, allow us to provide some background.

"The Canadian Union of Public Employees, CUPE, is the largest union in the province of Ontario with more than 250,000 members. CUPE members are employed in five different sectors, at least two of which, health care and social services, routinely face merger-driven representation votes which are mandatory under the present terms of PSLRTA.

"Over the years, CUPE has won and lost in PSLRTA-required representation votes. On occasion we have won votes where our members made up only a minority of voters and on other occasions we have lost votes where we were in the majority. In every case, CUPE members have accepted the results precisely because they were democratically arrived at through decisions made solely by the workers themselves and without outside interference by employers or government.

"In 2013 the office of the Minister of Labour reached out to CUPE and other unions to consult on the very kind of changes that are today found in schedule 2 of Bill 109. The three largest unions affected (CUPE, OPSEU and ONA) as well as the province's federation of labour, representing 1.3 million unionized workers, were unequivocally opposed to making changes in PSLRTA that would take away the right to vote.

"Following that consultation, CUPE was contacted directly by the Minister of Labour's office and advised that the government would not be proceeding with these changes.

"Relying on that undertaking, CUPE decided not to make any further representations to the provincial government on these matters and considered this 'case closed.' That understanding continued up until April 23, 2015, when, deep within the government's budget papers released in lock-up that afternoon, we discovered that government had reversed itself and was again proposing to amend PSLRTA to remove guaranteed representation votes in the case of workplace mergers.

"Starting that very day, CUPE (again) made clear to your government our unshakable opposition to the removal of workers' right to vote in the case of workplace mergers.

"Premier, as you and your Minister of Labour are well aware, a core premise of Ontario's successful and long-tested industrial labour relations system is that a trade union seeking to bargain on behalf of a group of workers must be freely chosen by them. This is such an important aspect of our system of labour relations in Ontario that it is spelled out in the 'Purpose' section of both the Labour Relations Act (OLRA) and of the Public Sector Labour Relations Transition Act (PSLRTA).

"The Labour Relations Act, 1995, section 3, states in part:

""Purposes

"The following are the purposes of the act:

"1. To facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees."

"The Ontario Public Sector Labour Relations Transition Act, 1997 (PSLRTA) states, in part:

""Purposes

"The following are the purposes of the act:

"3. To facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees following restructuring in the broader public sector and in other specified circumstances."

"Bill 109, as it stands now, would amend PSLRTA to remove mandatory representation votes and as such will lead to workplaces in which the union bargaining on behalf of a group of workers is not one freely chosen by them.

"It is CUPE's strongly held contention that to remove workers' right to vote, as your legislation would do, would not only contradict the 'Purpose' section of the Ontario Labour Relations Act and the Public Sector Labour Relations Transition Act, it will violate section 2(d) of Canada's Charter of Rights and Freedoms.

"To date in 2015, the Supreme Court of Canada has released three decisions defining the scope of constitutional protection for workers' rights under section 2(d) of the charter.

"These three decisions, which have been referred to as the 'new labour trilogy,' are Saskatchewan Federation of Labour v. Saskatchewan, Mounted Police Association of Ontario v. Canada and Meredith v. Canada.

"The jurisprudence now unequivocally establishes that freedom of association under section 2(d) of the charter in the labour context not only protects the right of employees to establish, belong to and maintain a trade union; it recognises and protects their right to join a trade union of their choosing that is independent from management.

"Premier, this is not only an issue of fidelity to the statutes and to the charter; there is a threat to practical, day-to-day functioning of employer-employee relationships in Ontario workplaces.

"Whenever two or more workplaces merge and workers previously represented by different bargaining agents are required to be represented by a single bargaining agent, there is an inherent challenge to the perceived legitimacy of the newly assigned bargaining agent as it will almost inevitably be the one not preferred by at least some of the workers affected.

"The genius of PSLRTA is that in these situations it ensures the legitimacy of the new single bargaining agent by requiring that the workers concerned take ownership of the choice of representative by making it their choice. If Ontario removes the right to choose, as Bill 109 would do, it will be less likely for workers to view as legitimate a union they did not choose but which was imposed upon them. And it will lead to workers becoming union members and being required to pay union dues without having had a chance to express their own individual preference for that outcome.

"Bill 109's proposed 'threshold' model rests on the premise that if one group of affected employees represented by the same bargaining agent constitutes 60% or more of the total workforce affected, then the outcome of any representation vote would be a foregone conclusion and therefore not necessary.

"This presumption is flawed, first, because it is at odds with the facts of previous votes under PSLRTA and secondly because it fails to recognize that the inherent value of the right to vote is independent of which voting choice one makes.

"Ontario's (and CUPE's) experience with PSLRTA demonstrates that workers do not always vote for the bargaining agent they belonged to prior to the vote. Depending on the circumstances of each unique merger situation and the mood of affected workers, a group of 60% or more could, under the current statute, vote to change their representation.

"Three examples well illustrate that this is exactly what does sometimes happen.

"In October 2014, a vote was held under PSLRTA for employees of Windsor Essex Student Transportation Services. Prior to the vote, CUPE had a clear majority of members but in the actual vote, Unifor was the unanimous choice.

"At Windsor Regional Hospital in November 2013, the voters' list showed 180 CAW members and 30 CUPE

members. However, despite having over 85% of the prevote members, CAW lost the vote to CUPE 53 to 83. Again in this case, the union with the majority going in was not the preferred choice.

"In May 2013, at Sunnybrook hospital in Toronto, despite there being an overwhelming majority of 1,555 SEIU members to only 148 CUPE members, CUPE almost won the vote. The final count, 536 for SEIU and 455 for CUPE, indicates that more than 300 SEIU members actually voted to be represented by CUPE.

"It is critical to note that in each of these instances, the pre-vote breakdown in no way foreshadowed the final outcome and, if anything, masked what only the vote later revealed as the actual preference of the workers affected. Schedule 2 of Bill 109 is built on the shaky premise that situations like these three will not arise.

"It is also worth considering that taking away mandatory votes creates a potential incentive for employers to structure mergers and acquisitions in a manner that limits the rights of employees to choose the bargaining agent of their choice. An employer might seek to have a collective agreement that is the product of years of negotiations displaced by a newer collective agreement that may not have the same level of benefits, simply by structuring mergers and acquisitions such that the winning collective agreement is always the one with the lowest wages.

"Cost has been raised by some as a possible reason to support the changes proposed in Bill 109. Given that the costs involved in PSLRTA votes are mostly borne by the unions and not the province, it is not clear why this should be an issue, let alone a reason to take away the right of workers to vote to choose their bargaining representative.

"One inference of Bill 109 is that a union in a minority position in a merger will have no expectation of success in a vote and, therefore, prefer to forego the effort and cost. Experience with representation votes in Ontario demonstrates that PSLRTA in its current form does not prevent a union from choosing to decline the opportunity to participate in a given representation vote while still maintaining the right to those votes on an ongoing basis.

"There is no evidence to suggest that timeliness is an issue, or that requiring a vote imposes a problematic delay in the selection of bargaining agent.

"In summary: The three largest union memberships that could be affected by the changes are opposed to it. As recently as 2013, those same unions got assurance from the labour minister's office that their voices had been heard and that the government would not proceed with these changes.

"There is no discernible, or even imaginable, good public policy outcome to be achieved by eliminating mandatory representation votes and taking away workers' right to choose their bargaining representative.

"History tells us that ensuring workers' right to choose their bargaining agents is a necessary component to ensuring successful labour relations in the province of Ontario.

"Core statutes, including PSLRTA, that define this province's labour relations framework require unions to

be the freely designated representatives of the employees involved. Bill 109 effectively repudiates that stipulation.

"Removing the now-mandatory condition that if workers are to become members of a union through a PSLRTA merger, it must be 'of their choosing' is an offence to section 2(d) of the charter and, were Bill 109 to become law with schedule 2 included, CUPE would see little alternative but to initiate a charter challenge.

"Experience with PSLRTA votes demonstrates that in many instances workers vote to choose a bargaining agent other than the one that represented them going into a PSLTRA-sponsored representation vote. Bill 109 is premised on the belief that this does not happen.

"PSLRTA in its current form does not prevent a union from declining to campaign and participate in a given representation vote while maintaining the right to those

votes on an ongoing basis.

"Finally, we want to stress that the mandatory voting provisions now existing under PSLRTA, whatever other virtue they may have, serve as a constant incentive for all potentially affected unions to provide quality service to their members, precisely because they know that if they do not, those members could quite likely vote, under PSLRTA, to join another union.

"In light of all of the above, CUPE respectfully asks the government to reconsider its course of action and

withdraw schedule 2 of Bill 109.

"We very much appreciate your openness to our concerns and we would be pleased to discuss these matters in

person at any time if that could be helpful."

Again, the letter was signed by Fred Hahn, president of CUPE Ontario, and Michael Hurley, president of the Ontario Council of Hospital Unions and first vice-president of CUPE Ontario. The letter was dated November 17, after Bill 109 was referred to committee.

I'm not aware of any response from the government to the specific issues raised in the letter, but I was here in 1997, when PSLTRA was passed by the Legislature, while our party was in government. I believe that I supported that legislation, as a member of the government side. I think it has held up under the test of time, and we see a significant number of labour unions in the province of Ontario who are coming forward to committee to passionately request that it be maintained and that these merger-driven representation votes continue to be allowed.

Any effort on the part of the government to diminish the right of the trade union members to vote to decide themselves which trade union they want to be represented by, I would suggest, is a diminution of workplace democracy in the province of Ontario.

0930

I would ask the government members to respond to these concerns that we've expressed. I'd be happy to table this letter with the Clerk, so that it's available to the other members to consider. We certainly would expect some response from the government members as to why this schedule is going forward as is, unless the government is prepared to withdraw it and support our position, which is that it needs to be withdrawn from the bill.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott. The floor is open. Ms. Forster?

Ms. Cindy Forster: Thank you, Chair. I think I'll start by saying that I have no idea why the government is wanting to intervene and amend this PSLRTA bill. It's a bill that has been in place for more than 20 years. It was a little bit unwieldy in the early days; certainly I was involved in a number of PSLRTA votes over the years when I worked for the Ontario Nurses' Association, but those processes got smoothed out after a number of labour board decisions with respect to carving out certain crafts and with respect to how the votes actually were processed in each and every situation.

This government has been reducing budgets, freezing budgets and impacting cuts to hospitals, long-term care and school boards. This legislation under PSLRTA, under the Public Sector Labour Relations Transition Act, applies to municipalities, applies to schools and school boards, and it applies to all health sectors today.

We have a government that's talking about major transformation in the health care sector, so I anticipate that there are perhaps going to be a lot of votes in health care in the coming years. To interfere in a process that's actually working—the minister himself has told a variety of unions who gave deputations to us last week that this

is only housekeeping.

The NDP Foled the Ministry of Health on this issue, and learned that there was only one stakeholder in this whole process. We confirmed at the deputations last week that the only stakeholder was one union, SEIU. When we questioned each of the other deputants that were here that day—CUPE, OPSEU, CLAC, ONA—not one of them had ever been consulted with respect to amending this legislation.

There are 444 municipalities in this province. There are 72 school boards. There are somewhere in the neighbourhood of 90 health systems, maybe a little bit more, 14 CCACs that are under review—perhaps of the government as well—and 500-plus nursing homes. These are hundreds of thousands of employees who, under this transformation and these reductions in budgets over the coming years, could in fact be impacted by this amendment.

The government still has not addressed the issue or answered us with respect to if two workplaces are merging, and one of those workplaces has 60% non-union. Is the government going to take away the rights of the other 40% unionized, or 39.9% unionized workers? They haven't addressed that; they haven't answered that question at all for us. That is, I think, of grave concern to people who want to be in a workplace that is unionized.

We know that schedule 2 proposes to amend section 23 of PSLRTA to eliminate the requirement of a vote in a restructured bargaining unit if at least the prescribed percentage of employees are represented by a single bargaining agent: "The prescribed percentage shall be more than 60%."

Now, we heard from Mr. Arnott and we heard from a variety of unions who presented here that in fact, the union that has the 60% or more doesn't always win. In

fact, there have been a number of votes over the last 20 years where that wasn't the case.

Workers should have the democratic right to actually vote for the union of their choice when they're put in that situation during a merger or an amalgamation. We know that ONA, CUPE, OPSEU, CLAC and a number of the other unions, regardless of whether they're public sector unions or not—I can certainly tell you that when I was at the OFL convention last Friday, there were many private sector unions as well that were opposed to taking away the democratic rights of workers in this province. Affected employees have a democratic right to choose the bargaining agent that will best represent their interests in a restructured employer, and sometimes they're not happy with the union that's representing them. This actually gives them the opportunity to look after what they believe is in their own interests.

The current provisions under the Public Sector Labour Relations Transition Act give effect to democratic rights by conducting runoff votes of all unions with existing members until the successful union demonstrates that they are the choice of more than 50% of the members. I can tell you that there have been votes like that in this province as well, where there were three unions actually representing the same classification of workers and there were runoff votes because during the first ballot one union couldn't secure 51%, or 50% plus 1. Affected employees make a conscious choice in the decision of their original bargaining agent and should have the right to make a choice in the decision of any successor employer.

Through this whole transformation process that we keep hearing about but we don't really get any details on, I think we're going to be seeing more of this. We saw hundreds of hospitals merge and amalgamate into around 100 health care systems in the province. We saw many municipalities across the province during the PC majority governments actually merge into, for example, the city of Toronto, where six boroughs came together to form the city of Toronto. There were PSLRTA votes that happened during that time as well.

There are situations, in fact, where the bargaining agents and unions have agreed not to participate in the vote because they had discussions with their members and they knew that there was no chance that they would be successful in a vote. I'll use the city of Toronto as an example where there were two large bargaining units of about 10,000 members each. There was an inside bargaining unit that was represented by CUPE for all of the inside workers at the city of Toronto in the merger of Scarborough, Etobicoke, East York, York, North York and Toronto, I guess. There was an outside bargaining unit for all of the outside workers. There was Amalgamated Transit. Then ONA actually represented the public health nurses in a number of bargaining units. I believe CUPE, if my memory serves me correctly, may have had one of the public health units at the time. 0940

Because the nurses are such a smaller number and the labour board, at the time, refused to carve them out for

the purposes of a vote to have a bargaining unit of just nurses, at the end of the day we chose, after discussions with our members, to actually not be on the ballot to try and represent all of the workers in the city of Toronto. So there are those kinds of voluntary things that happened through this process, as well, after consultation with members of our unions.

Now, the government made a media release on Bill 109, indicating that Bill 109 is designated to "help reduce the potential for disruption and delay for workers," and that eliminating the right of employees to make a choice on a bargaining agent is not consistent with the actual experience under the current provisions. When we FOIed the documents from the Ministry of Health, they in fact clarified in that document that there were actually no problems with PSLRTA, and that PSLRTA was not an issue. So why the government has chosen to take this on—we're still at a loss to try to figure that out.

In reality, votes, when they do occur, do not lead to any disruption or delay. In most instances the process goes smoothly, the campaigns are quick and the votes happen expeditiously once the transition date is established. These campaigns take place in a very short period of time; in seven to 14 days, maximum, the campaign is over and the vote takes place.

Now, in the early days, before the process was kind of worked out, employers were not wanting to let the unions have access to the workplaces, and we were having to have meetings off-site. It was more like an organizing drive when you're going out to organize a new union. But as the decisions went on at the labour board, a process was actually set out, so employers were required to give us the names of all of the employees in the bargaining units that were in question for the merger or the amalgamation. Meetings were actually set up in the workplace, in the cafeteria or in the auditorium, where whatever group of employees was involved could come down and hear from the various unions. At the end of the day, the vote is conducted in the workplace and whoever wins wins at the end of that process.

The experience that ONA, CUPE and OPSEU shared with us in their deputations indicated that any disruption or delay is extremely rare and that there is no justification to eliminate a worker's choice of a bargaining representative. Frankly, I'm surprised. I mean, we've got members sitting on the government side who actually came out of unionized workplaces, who are going to support taking away the democratic rights of workers in the public sector to actually vote for the union of their choice.

I think the other outcome is that at the end of the day, if a union actually loses a vote, it probably makes them more responsive to the remaining members that they have in other locals and bargaining units. For the workers, having the opportunity to vote on the new bargaining agent is an effective mechanism to assist members in accepting the workplace changes that are otherwise imposed upon them.

But I go back to the issue of what if it's 60% non-union. Those workers, in fact, won't have any voice of

any union at the end of the day if that is the government's proposal. I think introducing an arbitrary cut-off percentage, resulting in no mandatory vote, would result in a kind of gerrymander of the bargaining unit, and expensive litigation at the same time.

All unions with representational rights within preexisting bargaining units automatically get on the ballot, subject to the run-off votes where necessary. Most of the balloting and voting issues have not resulted in litigation. Clearly, at the end of the day, in some cases there have been some questions around who's included in the bargaining unit or who's excluded from the bargaining, but that generally gets worked out on the day of the vote or the day after the vote. It has not been a huge issue. Particularly when the percentages are close to the cut-off, expensive litigation could be pursued to challenge inclusion or exclusion, but generally that doesn't happen if the votes are not close.

I think that the current provisions of PSLRTA allow unions to agree on who the bargaining unit should be for the restructured bargaining unit, and I can tell you, as I told you before about the city of Toronto, that there have been a number of votes across the province where unions have agreed to not participate after consultation with their members, and this has not been a huge issue.

So introducing a threshold of 60% means that hundreds of workers—perhaps thousands of workers, depending on how many downsizing mergers happen as the government continues to freeze budgets, or continues to transform health care—could have their bargaining agent and their voting actually stripped away from them. This in itself could result in discontent with the imposed bargaining agents and unrest in the workplace, which I'm sure is not the government's intention.

There are some examples where a union has a large percentage of the membership but a vote was appropriate. ONA and OPSEU are involved in a merger of two hospitals in Kingston, for example. The parties have agreed to hold a vote and have agreed on the scope clause. ONA is a craft union that represents RNs in one hospital. OPSEU represents the RNs in another hospital. Of the more than 200 RNs combined, ONA represents 39% of the RN workforce, while OPSEU represents 61% of the RNs. In this example, if the proposed percentage threshold were introduced, ONA would not be on the ballot for the vote, even though ONA is a craft union. The result denies the ONA presented RNs the choice to choose their bargaining agent during the merger of two hospitals.

The negative impact of structural change—and I used the hospital because that's what I'm familiar with—is particularly a problem for union members who are forced to transfer to a new employer. I can tell you from working in the health care system for more than 40 years that there has been more downsizing, upsizing, right-sizing, transformation, and modernization than you can shake a stick at, and health care workers, through it all, continue to be the loyal caregivers that they are, even though they've probably had change every two or three

years for the last 40 years. The introduction of a threshold of more than 60% means that these workers would be totally left out in deciding not only where their workplace is or what location their workplace is, but who their union is, as well. This, against their entitlement to have a say in the workplace, will leave them powerless.

On to the constitutionality of Bill 109: We talked about this a lot in the Legislature. I know I spoke about it for an hour, and many more of us spoke about Bill 109. The vast majority of us actually spoke about this non-democratic amendment that the government is proposing.

In the mounted police case at the Supreme Court, the court found that the charter guarantees a meaningful process of collective bargaining, which includes a process that provides employees with a degree of choice and independence sufficient to enable them to determine their collective interests and meaningfully pursue them.

The court noted that the hallmarks of employee choice include the ability to form and join new associations and to change representatives, and that, Chair, is allowed under the Labour Relations Act. At this point in time, workers have the right to unionize; they also have the right to decertify. There's a process there, so why shouldn't they have the right in this situation of a merger, amalgamation, transformation or successor employer? Why shouldn't they have the right to actually vote for the union of their choice?

Accountability to the members of the association is an important element of choice for them. We've heard from some legal experts—

The Chair (Mr. Shafiq Qaadri): Ms. Forster, just to remind colleagues: Any one speaker has the floor for 20 minutes, at which point I'm required to interrupt. You may, of course, resume speaking, but I do pass the floor to others, should they wish it.

Ms. Cindy Forster: Okay.

The Chair (Mr. Shafiq Qaadri): Are there any comments from any other colleagues?

Mr. Ted Arnott: We'd like to hear more from Ms. Forster.

The Chair (Mr. Shafiq Qaadri): I repeat, are there any other—Mr. Colle.

Mr. Mike Colle: I think there are obviously some very good points made by both sides. I appreciate their sincerity in bringing them forward. There are always two or more sides to a debate or argument. In this case here, I'd just like to put on the record some of the other side of this debate, which hasn't been on the record enough.

There are two very respected unions that have thousands of members who support the amendment to PSLRTA. I would like to put on the record, first of all, a letter from Sharleen Stewart, who is the president of the SEIU Healthcare union. I know that this was addressed to "Dear member of the committee." If you don't have your copy—I don't think you referred to it, anyways—I can make available this copy that was sent to all members. I assume that all members got it. She says:

"Dear member of the committee,

"Ontario is witnessing transition in the healthcare system and, undoubtedly, those changes will continue to take place as the provincial deficit is controlled and the population ages.

"Some of those changes will be more structural in nature and the added disruption of a vote under PSLRTA where a union has every prospect of success, is, in our view, unnecessary.

"The high financial costs associated with these campaigns are ultimately borne by our members and where one union commands a clear representation, or conversely, a diminutive share, they are resources not put towards the real challenges facing our members.

"We sincerely respect, but ultimately, do not share the

views raised in opposition to this legislation.

"SEIU Healthcare supports and welcomes the changes contained in Bill 109.

"In solidarity,

"Sharleen Stewart

"President

"SEIU Healthcare"

Another union that serves many of its members across the province and across Canada—in fact, this is a national union—also disagrees with some of its fellow unions in the labour movement on this issue of PSLRTA and Bill 109. This is from Unifor. It reads:

"Greetings: "Re: Bill 109

"As you likely are aware, Bill 109, Employment and Labour Statute Law Amendment Act, 2015 was brought before the Legislature on second reading today. I expect the bill to be referred to committee with public hearings in the near future.

"As you well know, Bill 109 would provide that the OLRB need not require a vote under PSLRTA to determine the successor union should one union represent a prescribed percentage of employees in any new, post-integration bargaining unit. Existing provision under PSLRTA allowing affected unions to reach voluntary agreement on a successor union; as well as a non-union option being on the ballot if 40% or more of employees are not represented would remain.

"Unifor accepts that this measure is a reasonable and practical approach to curtailing some of the regrettable mischief and turmoil caused by these PSLRTA campaigns—subject of course to what that prescribed percentage would be. Any incumbent union representing three of every four employees in these PSLRTA campaigns obviously commands the overwhelming advantage. Conversely, the union representing only one of every four employees is placed in a desperate and untenable position that can lead to bitter and lingering division and resentment among the affected workers.

"We have all likely been both David and Goliath in these campaigns—and the competition fostered by PSLRTA amongst our members channels their energies into selfish narrow interests rather than challenging the broader underlying restructuring processes and policies. We can't win in these broad struggles when we are spending such time and resources fighting often against all reasonable odds.

"In addressing Bill 109, our unions have a clear choice—division amongst unions with some embracing Bill 109 while other launch partisan attacks to preserve the right of a union under any circumstance to compel a vote. Or as in other jurisdictions, we as unions can in unity adopt a fair and reasonable limit in these future PSLRTA campaign; whether through a formal consensus amongst our unions or through input into Bill 109.

"I look forward to this discussion with you both individually and as the various representatives of the

members potentially impacted by PSLRTA."

It's signed by Jerry Dias, the national president of Unifor. So those are two major unions that have a different opinion. I certainly respect the opinion of CUPE and OPSEU, who have had a divergent opinion. It's their right to have that divergent opinion.

I also want to read into the record from the Ontario Hospital Association. This is their submission to the

Standing Committee on Justice Policy:

"The Ontario Hospital Association (OHA), on behalf of its members, is pleased to have the opportunity to provide comments to the Standing Committee on Justice Policy regarding Bill 109, Employment and Labour Statute Law Amendment Act, 2015. The OHA supports the goal of Bill 109 to help reduce the potential for disruption and delay for workers in the broader public sector, including in hospitals, when there are changes to bargaining units following amalgamations, restructuring and health services integrations; and to help to further ensure the rights of employees across the province are protected.

"As the voice of Ontario's 147 publicly-funded hospitals, the OHA has an ongoing mission to ensure that hospitals can meet their full potential to achieve a high-performing health system. The OHA has been recommending changes to the Public Sector Labour Relations Transition Act (PSLRTA) for a number of years to facilitate integration of health services. PSLRTA has a more substantial impact on hospitals and the health sector than the rest of the broader public sector because PSLRTA applies to 'health services integrations' in addition to other broader public sector amalgamations. As such, we are pleased to see the government's amendments to this legislation.

"The OHA proposes"—and that goes on. I just wanted to read those into the record to show that there is, obviously, a difference of opinion on these amendments to PSLRTA that are before you. I just wanted to read those into the record as a response to some of the legitimate questions raised by the opposition parties.

The Chair (Mr. Shafiq Qaadri): Thank you. I think we have both Mr. Hillier and Ms. Forster. Mr. Hillier.

Mr. Randy Hillier: Thank you, Mr. Colle. I was listening to your comments and I was wondering. First off, do you agree with those Stalinesque views that voting is an undue disruption and should be limited and prevented in the workplace by SEIU's comments, as well as Jerry Dias's comments from Unifor?

Of course there can always be different opinions. Stalin had different opinions about democracy as well. We choose not to accept that as a basis or a starting point for discussion or where the threshold of democracy ought to be. So I would like Mr. Colle to comment if he is in agreement that voting is an undue disruption, and should be limited, as he just read into the record by the SEIU. And while you're responding to that, Mr. Colle, maybe you can also indicate to this committee what were the political donations from the SEIU and Unifor to the government for—is this some sort of—

The Chair (Mr. Shafiq Qaadri): Mr. Hillier, let's stick to the subject at hand. I'm struggling to allow your

Stalin references, but do go ahead.

Mr. Randy Hillier: Well, listen, democracy is something worth defending. Voting is something worth defending and advocating for. If anybody here doesn't believe that democracy is worth defending, then you have to question why you're here in the first place.

This is a fundamental freedom that is protected by our Constitution, and this government is, with this schedule, diminishing that constitutional protection. I find it

atrocious.

Whether or not Jerry Dias wants to diminish our constitutional protection, I don't give a damn. We have an obligation to protect and defend our Constitution, and protect and defend the freedoms of our constituents whether they're in a bargaining unit or not. That's what this Legislature is charged with: defending and protecting the freedoms in our democracy. I find it interesting that we have the parliamentary secretary to the Minister of Labour here on committee, but not one word in defence of our Constitution, but also not one word in defence of his own ministry's bill with regard to schedule 2.

We've put it on the record; we've asked for a response. Mr. Colle was kind enough to give us some different opinions that different people might have on schedule 2. I didn't hear Mr. Colle offer up his own personal justification why he will vote, or the government will vote, to take away the rights of people in Eglinton–Lawrence, or take away the rights of people in

Mississauga or Barrie or anywhere else.

I'm looking forward to hearing from either Mr. Colle or Ms. Hoggarth or the parliamentary assistant: Why do you believe that you ought not to protect the Constitution, protect the freedom of your constituents, protect the freedoms and rights of everybody in this province, and why would you arbitrarily strike down—dismiss—people's ability to exercise their freedom of association under the Constitution to opt and select for the trade union of their choice?

If that is acceptable to this Liberal party, to this Liberal government, to strike down freedom of association and strike down the selection of the trade union of your choice, what else are you prepared to strike down? What else are you prepared not to protect in our Constitution? I would say the answer is you're prepared to strike down anything and everything, if you're prepared to do that.

Mr. Colle, do you agree with Mr. Dias, do you agree with the SEIU, do you agree with the Ontario Hospital Association that voting is an undue disruption and it ought to be limited?

The Chair (Mr. Shafiq Qaadri): Ms. Forster?

Ms. Cindy Forster: I would suggest that if there were teachers today in the middle of mergers and amalgamations or there were municipal workers, or even if there were private sector workers in the midst, we would have had more of the unions coming out in support of having no change to the PSLRTA legislation.

I have to say that I'm really surprised at this so-called progressive Liberal government to even take this issue on and to actually try and interfere in the democratic votes of workers in any sector. Although I shouldn't be surprised, because they're doing it with respect to the trades—the sheet metal workers, the plumbers, the pipe-fitters and the International Brotherhood of Electrical Workers—with their EllisDon bill, Bill 144.

I guess what's more surprising is that we are all elected people sitting around this table, with the exception of the legislative counsel, the Clerk and Hansard. Would we support having a run-off vote to make sure that the governing party had 51% when they're elected at a provincial or a federal level? We don't want our democratic rights interfered with. You can actually form a government in this country with 38%, 39% of the vote, provincially and federally, where 62% of the people don't support the government. But yet, in the same breath, those elected people are actually taking away the rights of the people they were elected to represent.

It just amazes me that we can sit here and actually do that, when we all know that this is not an issue. So I ask again, what is the reason for actually bringing forward this amendment? The government must have some reason that they're doing this, but they're certainly not

prepared to share it with us.

Last week at the deputations, Ms. Martins suggested that the government was in discussion about lesser thresholds. We haven't seen any amendments coming forward. She's kind of frowning, but, in fact, it was when one of the deputants—I think it was SEIU at the time, and I asked a question of that deputant. But I don't have the full Hansard yet, which in itself is problematic, so I

can't actually quote it.

I actually raised that issue of not having the Hansard and how it can negatively impact your amendments and your discussion when you get to clause-by-clause. What happens is that the sub-committee gets together. They put together a very tight schedule: You have deputations on Monday and you have to have your amendments in by Wednesday at 10 o'clock. But you don't have a Hansard. We don't have a Hansard because we don't have enough staff to actually prepare the Hansard, because the House comes first. I'm told—and Mr. Arnott may be able to tell me this because he's been here a lot longer than I have—that in the old days, committees used to sit when the House wasn't sitting—

Mr. Ted Arnott: The good old days.

Ms. Cindy Forster: The good old days—so, in fact, the work of the people who actually prepare the Hansard was spread out throughout the year, as opposed to trying to get it all done while the House is sitting, which is impossible.

Although Ms. Martins is kind of frowning and suggesting that she didn't say that, in fact, she did say that the government was looking at a lesser threshold. She said that in response to a question that I asked of one of the SEIU members who was here in deputation.

So I ask, for the record, what is that threshold? In my view, the threshold should be no threshold, that it should remain the same, because that is what's working. That is what has been working for 20 years and it's not an issue.

But anyway, back to where I was before I was interrupted, the constitutionality of the bill: Union legal experts that we actually heard from this past week—and we heard from Liz McIntyre from Cavalluzzo Shilton McIntyre Cornish Barristers and Solicitors here in Toronto. I think Liz said that she had been in this labour law business for more than 40 years. They are of the view that these proposed amendments to PSLRTA would not stand a charter scrutiny.

By depriving members of the union of their choice on the basis that they fall below an arbitrary minimum percentage of a newly integrated bargaining unit is an unnecessary infringement of their charter right to the union of their choice. So the proposed change is totally unnecessary. I don't know why the government would want to embroil themselves in a charter challenge. They have enough court cases and investigations going on—I think there are three or four OPP investigations at the moment and several lawsuits around winter road maintenance—and now they want to embroil themselves and spend taxpayers' dollars on a charter challenge.

The legal experts are saying the proposed change is totally unnecessary. There have been no problems under the current provisions. Having a vote without an arbitrary cut-off is consistent with workplace democracy and the charter of rights. We have legislative counsel here. I'd actually like to ask Ms. Hood, what is her opinion of a successful charter challenge with respect to this amendment being proposed by the government?

Ms. Julia Hood: I'm not a constitutional law expert. It would be up to a court to decide the constitutionality of the provision. I couldn't endeavour to say how a court would decide.

Ms. Cindy Forster: Are you aware that the government even reviewed the trilogy of cases with respect to constitutionality when they were actually developing this amendment?

Ms. Julia Hood: Well, that would be a question to ask the government.

Ms. Cindy Forster: Well, I could ask them, if they were listening. Members of the government, did you actually consult with legislative counsel with respect to constitutionality when you proposed this amendment? Did the Ministry of Labour do any of that? Who is the parliamentary assistant, anyway?

Mr. Randy Hillier: Mr. Delaney.

Ms. Cindy Forster: Mr. Delaney, could you answer that question for me? No response; it's like question period.

Mr. Mike Colle: Well, it's great to get a minute in somehow. Thank you for the time.

Ms. Cindy Forster: I wasn't quite finished.

Mr. Mike Colle: Do you want the answer or you don't want the answer?

The Chair (Mr. Shafiq Qaadri): Ms. Forster, as you like. You did ask a question and I think Mr. Colle is now responding.

Ms. Cindy Forster: Oh, he's going to answer? Okay, thank you.

Mr. Mike Colle: Well, thank you for the democratic right to speak here, yes. First of all, I want to say that I really object to the previous name-calling done by the member from the Conservative Party. That's totally uncalled-for, especially when he also tried to malign presidents of two major Canadian unions. He should apologize and withdraw those slanderous comments he made.

Mr. Randy Hillier: When they're acting like Stalin, I'll call them Stalinesque.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. Let's continue.

Are there any further comments? Ms. Martins.

Mrs. Cristina Martins: Can I just, for the record—and as Ms. Forster correctly said, we do not have the Hansard right now so we can't actually go back. But what this bill actually proposes is a minimum of 60%, so I would not have suggested that the government was in any type of discussions to lower that threshold. We would be in discussions to see what that threshold would be, but it would be beyond this piece of legislation and with further consultations. I just wanted to put that out there. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Martins. We have one minute left before we officially recess for question period.

Ms. Forster?

Ms. Cindy Forster: I'm going to actually go back to the case law, which is a historic win for workers' rights. The Supreme Court of Canada released three decisions in 2015, "defining the scope of constitutional protection for workers' rights under section 2(d) of the charter. This new labour trilogy advances protection for the fundamental rights of workers, and continues the trend in the jurisprudence toward workplace justice.

"The jurisprudence as a whole now unequivocally establishes that freedom of association under 2(d) of the charter in the labour context protects the right"—

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We will be recessing until 2 p.m. I would encourage us to consider our language and personalized remarks.

We'll return at 2 p.m. Thank you.

The committee recessed from 1015 to 1400.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. On time, precisely. Where were we?

The Clerk of the Committee (Ms. Tonia Grannum): We were in debate on schedule 2 of the bill.

The Chair (Mr. Shafiq Qaadri): The floor is open for comments on schedule 2.

Mr. Randy Hillier: Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Preferably parlia-

mentary language.

Mr. Randy Hillier: Always parliamentary language—anyway, at our last exchange I was asked to apologize for some comments. I just want to make it clear: In those comments I was referring to Mr. Colle's reading into the record letters of support for schedule 2 by the OHA, by Unifor and by the SEIU. With the SEIU specifically, there were comments made that voting is a disruption and that they ought to be limited as a justification, in the SEIU's view, of this attack on people's fundamental rights and a direct challenge to constitutional protection of freedom of association and freedom to choose who will be one's bargaining agent.

I suggested that the view that voting is a disruption and ought to be limited was a Stalinesque view. I didn't ascribe that to Mr. Colle; that was the quote that he read into the record on behalf of SEIU. I just want that to be

clear. But I did ask a question of Mr. Colle-

The Chair (Mr. Shafiq Qaadri): Mr. Hillier, we

appreciate your clarification, but if we could just-

Mr. Randy Hillier: It is important for the committee to know. Do Mr. Colle and others on the government side support the view that voting is a disruption and ought to be limited? Maybe I'll get a response. I know that the parliamentary assistant has been mute, silent, and has not wanted to defend the government bill as of yet.

But I would like to read, for the committee to hear, a letter that was drafted by OPSEU, the Ontario Nurses' Association and by CUPE that was delivered to the Minister of Labour, the Honourable Kevin Flynn. It was

written on October 1 of this year. It says:

"Dear Mr. Flynn,

"The Ontario Legislature currently has before it Bill 109, an amendment to the Public Sector Labour Relations Transition Act, 1997. If adopted, Bill 109 would represent a dramatic assault on workplace democracy in our province."

Interesting choice of words, "a dramatic assault on

workplace democracy."

"Bill 109 represents a sweeping change to the way organized labour representing public sector workers conducts its democratic processes inside the workplace. It would deny workers, in a merger vote, the right to elect their union of choice.

"Currently, merger votes in Ontario must be conducted irrespective of which bargaining unit enjoys the largest number of members. Bill 109 would change this provision.

"As proposed by your government, no merger vote would be required if one union represents more than 60% of the combined unionized workforce.

"Our labour organizations have adopted a strong position in opposition to Bill 109. The proposed legislation

does not take into account that while one union may represent a majority of workers, it doesn't mean that same union enjoys either a superior collective agreement or its ability to enforce the contract.

"In a merger vote all workers should be entitled"—they use the word "should"; we know that the Constitution and the law of the land says "must"—"to judge each union on their own merits. Bill 109 rewards one union for having more members. It doesn't allow workers to decide for themselves which union is strongest at the bargaining table or which provides services that members wish to receive.

"On behalf of the Canadian Union of Public Employees, the Ontario Public Service Employees Union and the Ontario Nurses' Association, we strongly urge you to amend Bill 109 to address its shortcomings in respect to maintaining democracy in the workplace by eliminating the 60% threshold on merger votes."

And that's signed by Warren "Smokey" Thomas, president of the Ontario Public Service Employees Union; Linda Haslam-Stroud, president of the Ontario Nurses' Association; and Fred Hahn, president of CUPE Ontario.

I'll just maybe emphasize that these are organizations, collective bargaining agents, that bargain with the government. These are unions that represent our employees, the employees of this province. They're telling you in very clear, very unequivocal language that you're

wrong—that you're absolutely wrong.

As far as I understand, they've not received a response from the minister. It may be the parliamentary secretary would be able to confirm or deny if the minister has indeed responded. I would be happy to hear what that response was to this letter of October 1. I know the member from the third party also brought up a letter addressed to the minister. As far as I understand it, there hasn't been a response to that letter as well. But if there has been, we certainly would be happy to have those letters read into the record, or even paraphrased or summarized to give us some information, give us some knowledge, about why the government is so steadfast in its assault, this dramatic assault, on workplace democracy.

One has to say, we've now had over an hour of discussion, basically, on schedule 2. The only government member who has offered up any comment is Mr. Colle, and I'm glad that he has, but I do know that the parliamentary assistant is here—

Mr. Mike Colle: I'm the parliamentary assistant.

Mr. Randy Hillier: Oh, you're the parliamentary assistant? Pardon me. I'll correct my record: Mr. Colle is the parliamentary assistant. I was under the—

Mr. Mike Colle: It changed last year.

Mr. Randy Hillier: Okay. My apologies. So Mr. Colle, maybe you could explain to the committee what the minister has responded to these letters from OPSEU, CUPE and ONA, and give us some indication why this government is choosing to take on a battle—and a battle that I can't see as being defensible, a battle that attacks people's freedom to associate and the right to choose who their bargaining agent is.

With that, I will listen patiently and intently to Mr. Colle's response.

1410

The Chair (Mr. Shafiq Qaadri): Mr. Colle.

Mr. Mike Colle: Sure, thank you, Mr. Speaker. Again, I just want to paraphrase what was in the three letters I read into the record that were from three different points of view from the letter that you read into the record.

I read from Unifor. Jerry Dias said quite plainly that he and his union, which is a major national union plus an Ontario union, support the threshold on mergers as it would be productive to continue the good work that labour unions do and avoid the disruptions that occur when there are mergers.

I also read on the record the comments that the president of SEIU made to the same effect. The president said that she thought that when mergers occur, there can be all kinds of acrimony, there can be all kinds of divisive

forces within-

The Chair (Mr. Shafiq Qaadri): Mr. Colle, just before you continue, Ms. French, would you like to speak next, or are you just smiling at me in general?

Ms. Jennifer K. French: Well, I'm very pleased to be here and offer my thoughts on the discussion, but I can wait my turn.

The Chair (Mr. Shafiq Qaadri): Okay. Mr. Colle.

Mr. Mike Colle: The president of SEIU basically said that their union, which is another major union in Ontario, supports the threshold being in place when there is a

merger.

You referred to the nurses' association's comments in opposition to this change. We have the Ontario Hospital Association, which deals with these unions in the workplace on a regular basis, saying that they support this amendment, which would allow for thresholds to take place once there is a merger and the majority of the workers belong to one of the unions—that the merger could go through under those circumstances.

It is a change, and whenever there's change, there are different points of view. Obviously, in this situation here, there is a split in the labour movement on which is the best perspective on this amendment. That's not unusual.

We also note that this type of threshold already exists in two other Canadian provinces, Alberta and Saskatchewan, where they have the same thresholds, or variations

of the degree of thresholds, on mergers.

That is why we are supportive of this change: because we've also listened to these major unions and the Ontario Hospital Association, who think that this would be an improvement in terms of further workplace effectiveness, harmony and getting down—as I think Mr. Dias said—to the real work of improving workplace conditions, better wages and better benefits for workers. Obviously, we're not going to have everybody on-side, but there is a diverging opinion here.

Mr. Randy Hillier: Maybe I'll just follow up on that.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: Yes. We know, Mr. Colle, that the concept of rule of law, the concept of statutes and

legislation—fundamental to it is the protection of minority rights. That is one of the keystones of legislation in our system: protection of minority rights, and not to allow the majority to trample upon the rights of the minority.

Clearly, this schedule 2 is in direct contravention to that keystone of democracy and that keystone of the rule of law, where, instead of protecting minority rights, it is going out and depriving the minority of that right that

they now hold.

I can understand why some unions might want this for economic reasons. If they are the largest bargaining unit, if they have over 60% of the workplace organized into their trade union, I can understand that. It would be very convenient; it would be very prosperous; it would be all kinds of advantages for that union, but it's no advantage to the people who are represented by those unions.

We have to make a distinction. Is the legislation here for the protection of the employees or is the legislation for the protection of a few unions, to make it easier for them to merge, acquire, amalgamate and bring more people and more dues under one union's operation?

I hope and I trust and I have no doubt that you, Mr. Colle, do not want to trample upon the rights of the minority and trample upon that keystone of democracy, but it appears that your minister is willing to do so. Although he's not here to speak to the bill directly, you are here in his stead and you're left to defend this.

You also mention that there are two other provinces that have similar legislation with regard to mergers, acquisitions and amalgamation. You mentioned Alberta and Saskatchewan. I've been here long enough—I've been here for eight years—and I've heard the debates in the House. Never once have I heard this Liberal government, in eight years, hold up Alberta labour legislation as the model that they want to follow and model their public policy after—and I'll include Saskatchewan.

It's very unique and very ironic that, for the very first time, I hear the government—and yourself, Mr. Colle—using Alberta and Saskatchewan as models for Ontario to replicate with our labour legislation. I think you'll agree with me: This is the very first time that this government—or the Liberal government since 2003—has exhorted the efficiencies and the value of replicating Ontario labour legislation along Alberta and Saskatchewan lines. It appears that you may be picking and choosing what parts of Alberta and Saskatchewan labour legislation that you agree with and want to replicate here.

I'll leave it at that. I think you will understand that this is a trampling of minority rights. It's using legislation in direct contravention to its purpose of protecting minority rights and is now trampling upon it with schedule 2.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. To you, Ms. French.

Ms. Jennifer K. French: Thank you, Chair. I'm pleased to weigh in on this conversation, and I'm sorry that I wasn't here this morning. I understand that it was very enriching conversation. I'm pleased to finally have made it.

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I would like to take this opportunity and spend a little bit of time talking about schedule 2. If I may, I'd like to actually refer back to last week, when we heard from CLAC when they had come in to speak to us as part of the hearings process. We heard from Ian De Waard from CLAC, and I'll read directly from that. Regarding schedule 2, he said:

"The proposed changes to the PSLRTA have brought our leadership team at CLAC a great deal of concern. Our union has long been a proponent of ensuring that workers can democratically and collectively choose the union that represents them. The collective power of the workers to build a better workplace community is enhanced, not diminished, when workers can freely elect to join, retain or displace the union that represents them.

"CLAC does not support the change in this section of the bill." I will add that we don't either, but back to this. "It permits that a unilateral decision to amalgamate workplaces in the broader public sector will cause an automatic change in bargaining agent. When one of the groups is not large enough, this change will take place with no regard for the will of the affected workers. In our opinion, this amendment undermines a basic freedom of association, an essential right and Canadian value."

Further to that, "Such a decision represents the will of that workforce in that place and time and this collective decision should be binding until or unless the workforce ... chooses another union or chooses to become nonunion."

They spoke about workplace democracy and union accountability. As they said, "The act of democratically choosing a bargaining agent is an important exercise in building a strong, healthy union movement."

And while we heard from others who talked about morale and talked about some of the challenges of that process, CLAC reminded us that they too have been through the merger process, and that their example is that workers at a "small community hospital had been represented by CLAC for more than 20 years. Those members did not want a change in representation or to forego a collective agreement that they had worked hard to develop and to craft for their particular workplace." However, in the end, their members were absorbed into that other union, but only after mounting a "campaign for choice, and after having had the opportunity to fairly cast their vote. It was not a perfect outcome and CLAC has made some suggestions to address this kind of scenario in future, but these suggestions are beyond the scope of this bill. In that case, the electoral process was democratic and the members have accepted the result because they were entitled to the process.'

There are some key points in there, hearing from someone who came to committee to be heard on this issue, who has been through the process and recognized that it was perhaps an uncomfortable process and a challenging one. To recognize that it was a necessary part of the process in strengthening not only their workplace, ultimately, but strengthening democracy—it's a

reminder. It isn't just us sitting here in opposition having opinions; this was people who have lived through it, and have worked through it, and were fighting to protect their right to go through that process.

I will remind you as well that when we were discussing this last week and talking about perfect outcomes and democratic processes—we just lived through a fairly large democratic process; you may recall the federal election. I would like to go on record saying it was not a perfect outcome. I would also like to say that it is part of our democracy. As we heard from CLAC that their members strive to accept the outcome of a process they've been involved in because they were entitled to the process, I am also struggling to accept the outcome of that. But that's the nature of democracy: Democracy can be uncomfortable, and I think that it should be. I think it should be messy when need be; doesn't that strengthen a process?

I'm glad to remind us of what our partners at CLAC had come to tell us, but also there were some questions that were raised last week. Maybe these answers came out this morning as part of this process and I wasn't here, so perhaps I'll ask them again, and maybe I can get some answers.

What happens in a merger? When we're talking about disallowing a vote—if we have a merger and a union representing over 60% of the combined workforce, that they just automatically win and become the bargaining agent, what happens in a merger when you have two merging workplaces and one that isn't unionized? If they are the majority, if they are over that 60%, what happens? Does that mean that no one, then, is unionized? That they win because might makes right, and so we no longer have a represented workforce? I'm curious about what happens there.

Also, I had asked this question. When these mergers happen—and I understand that in the process sometimes it's going to be a necessary merger; other times it might be a little bit more constructed. There may be some say in how we can combine workforces, like matchmaking—sort of merger-making. If we always know the outcome, if we always know who is going to win because there isn't going to be a vote, then what happens if you have two workplaces and a represented workforce—someone is represented by a union that might challenge the employer a bit more, that might challenge the government a bit more, that might be a little bit louder or represent in a more vocal or uncomfortable way?

Doesn't it seem, for the sake of trying to control the situation, that we could ultimately have mergers that are crafted in such a way that it's almost like chess, that you would have the larger union take out the smaller one? You could do that time and time again until you don't have any unruly or vocal unions left because all of them that you have allowed to win, perhaps, are in your back pocket.

Interjections.

Ms. Jennifer K. French: I appreciate all of the opposition support here today. This is clearly an important issue.

Anyway, back to my point about matchmaking or merger-making: I see it as an opportunity for the government potentially to stack the deck. I don't think that's fair. I don't think that's right. As I said, might doesn't make right at all.

So back to the fundamental point of this, that workers should have the right to choose. Workers also have the right to accept or not accept the outcome. As I said, democracy can be messy and sometimes I think that it should be. If we just always accept it because it's a foregone conclusion, nothing will ever grow, nothing will ever change. I think democracy—by the way, I appreciate having the opportunity to really talk about democracy because here in the Legislature we talk about it, but it doesn't really resemble the democracy that many people have fought for. What many people actually think is happening in this Legislature may or may not actually resemble democracy some days, and I'll come to that.

I would say that democracy is a process. It's going to have give-and-take and it's going to be uncomfortable and sometimes you win and sometimes you lose. I know that this government loves the ballot box part of democracy. The last couple of elections certainly have worked in your favour when it comes to that. But I've been sitting here in committee at different times and I've heard things that I really haven't appreciated as a member of the broader community: "Well, if people don't like it, then they can let us know at the ballot box." Well, that's a ways away. What happens in the interim? You like the ballot box part, although not when it comes to schedule 2; you want to do away with the ballot box, so only when it suits you, I guess. You like the ballot box part of democracy, but you don't appreciate the engagement part.

I value the committee process. I imagine what it could be when not sitting across from a majority. I respect what it could be. But what we've heard in committee when people come and give their submissions and they give their input—each party has the opportunity to have three minutes of questions and comments or to engage the people who have travelled to Queen's Park. I think that's very telling, when it is somebody who comes to a hearing and wants to share and it's a contrary opinion. Time and time again, we watched the government talk over them or talk through the full three minutes and not give them an opportunity to further the conversation. I think that's telling. If you don't like what someone has to say, then by goodness, don't let them say it. I think that is not just problematic; I just think it's rude. But it certainly isn't what engagement could look like, nor is it what it should look like, to talk over people they don't agree with or to disallow them from sharing.

In opposition, we call, fairly often, for bills to be travelled or to take the conversation outside of the GTA or to take it to different regions, to include other Ontarians in the different parts of the process. In fairness, some issues and some bills have travelled. I had the opportunity to—I'll use the term "crash" the ORPP hearings in Kingston. I recognize that different issues have made their way, to some extent, around the province.

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But I thought it was interesting, at the ORPP hearings, that there was a discussion paper, and that people were allowed to speak for a limited time on pre-determined, pre-approved questions: "These might be the three questions that we want to discuss. That's it; that's all. Oh, you have a fourth point? No, this is not the time nor the place."

Scripting what people can say or outlining that this is all you can talk about is not democracy. I kind of feel like it's—can I say "cowardly," or is that not parliamentary? Anyway, I feel that you should invite that input. You should invite the argument, potentially, the dissent, if necessary, but definitely the conversation. Why are you afraid to hear what they're going to say? If your policy is strong enough, if your bill is strong enough, then it should withstand criticism; it should withstand the argument and it should hold water.

Guess what? If it doesn't, good; then you know. Then you can strengthen it. Then you can re-evaluate it. Then you can scrap it and start over. Isn't that the point of having debate? Isn't that the point of involving and engaging? But disallowing or limiting what democracy can look like is not how we strengthen our system.

I had mentioned travelling, but consultations, as I said, really are only on the government's terms. We've been holding a lot of town halls, in opposition, going around—we've told you about them—in regard to the sell-off of Hydro One. At those town halls, it's exactly what you would expect. It is members of the community, members of the business community, people from across the region coming and asking what they can do to stop it and how they can be involved, wanting more information because they haven't had information all the way along. People are angry. People are confused. But it's people wanting to engage.

In fairness to both opposition parties, we've both been engaging in that process. The government has not. Maybe it's because you know exactly what you'll hear and it's contrary to what you want to hear, but you should still have to hear it.

Back to the point—I'm going to say it again and again—that democracy might be messy, but we should embrace that. It's a chance to grow. It's a chance to improve. A little science lesson—maybe you can appreciate this. Some of the strongest rock on planet Earth is metamorphic. It's formed through intense heat and pressure, and that's what makes it so strong. It's that natural conflict that motivates evolution, that motivates change and that actually builds our foundation. But then, we have a government that is supposed to be leading the way here, and the leaders that the masses are looking to—not just for guidance, but trusting that you're looking after things and you're doing things in the best way possible—are afraid of heat. You're afraid of that pressure. Instead, you try to squelch it or vilify it or undermine it and discredit it, and that's—again, back to the point—not how we would strengthen our system. I think that we should be embracing democracy.

Back to this schedule of this bill: We are talking about a vote. We're talking about, in a workplace, people's right to actually choose who will represent them. We can talk about discomfort. We can talk about morale after a vote—my tone sounds like I minimize that.

That may be a natural part of the process, but it is a process that should be allowed to happen. It's a process that should be encouraged to happen. Because to even have union representation, chances are that there has already been pressure and heat, potentially negative, which have led to that need for representation.

When you have a merger, then you've got an opportunity to re-evaluate. Is your current representation what you deserve, what you want, what is best for that work environment, or is this other one over here? But it's about choice. It's about using their voice. It's about getting the facts and the information—and yes, is there going to be money spent, as we've heard by the unions? Sure.

But when we're talking about cost, what's the cost of not having the vote? What's the cost of just saying, "Oh, forget it. You know what? They're bigger. Never mind. Oh, well"? That's not what we want. That isn't what I imagine workers would want. Workers want to be appropriately represented and we need to allow that to happen. In fact, we should encourage that to happen.

I'm going to go back to my point that I was making about the government not engaging or being afraid to engage. When someone doesn't agree with you, take it, learn from it or ignore it, but process it. If someone doesn't agree with you, so what? Don't ignore them; don't discredit them. We've got independent watchdogs; we've got offices like the Auditor General that criticize you—and then it's sort of, "Oh, well, she must have meant this," or "Ignore, discredit or bury that information. We don't want to talk about it because it's uncomfortable." It's an opportunity for you to strengthen. Don't you want to put forward bills that people don't challenge because they're as strong as they could be? Don't you want to put forward a piece of legislation where all the stakeholders say, "Yes, we were consulted, and while we may not have agreed with it, they took it into consideration. We feel a part of the process"? Isn't that what you ultimately want? Doesn't that ultimately strengthen you as a government?

New information should give you a chance to reevaluate or to recommit, and I think discussion, dissent or argument isn't something to shy away from or disallow. I think that it's something that underpins—not undermines—democracy.

Imagine; imagine what would happen if this was a government that listened. You might learn something. As I said, the bills might be better. You might have stronger legislation, ultimately. I suspect you'd have more respect from Ontarians, because you seem to be losing that hand over fist as they keep finding out that you're not interested in their input. And I think, ultimately, they'd have more faith in the process. Isn't that why we're all here?

I've said time and time again that change is uncomfortable. So what? Then grow, then change course—or stick to your guns because it was the right argument. Commit to something. But not allowing people to have their say doesn't make you seem strong; that makes you seem like bullies over and over.

Back to the trade union movement and schedule 2, specifically: The trade union movement, I would say, has grown out of conflict and fire. They have a passionate and—vibrant, I think, is the polite word when looking at their history. They're certainly not afraid of a bit of fight. They've been fighting for fairness; they've been fighting for rights; they've been fighting for people's rights in the margins, not just for workers. I think I maybe would challenge them. If they lose a vote, so they lose a vote. Then they can lick their wounds or they could reevaluate, or maybe they could strengthen. They can do any number of things. That's their right as an organized group. That's their charter right as an organized group. Why are we taking this on and undermining it—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French.

Just to inform my colleagues of the protocol, a speaker is welcome to speak for 20 minutes at a time. At the end of the 20 minutes, they must conclude. The floor is now open to any other speaker, including the NDP.

You are welcome to speak again, but after a little bit of rotation elsewhere.

The floor is now open.

Mr. Randy Hillier: Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: Thank you, Chair. We're not getting too much response for any of our questions. We've still not seen any indication that the government side is willing to respond to this committee any more than they're willing to respond to the unions—OPSEU, ONA and CUPE—in their letters to the government about this assault on workplace democracy.

1440

And, Chair, I have to say this: In the absence of a defence, in the absence of advocacy by the government, when thoughtful, good questions have been put to the government side and there is a refusal, an adamant refusal, to respond to those requests for information, one must become suspicious of what is going on. That is the job and the role of every elected member: to be an advocate, to speak out, to be vocal. When we see members choosing not to be vocal, choosing to have some duct tape placed over their mouth instead of being vociferous advocates for their constituents, suspicions do arise.

So I'll ask this directly to the parliamentary assistant: What is the motivation behind this? I have in my hand information from Elections Ontario that says that last year Unifor contributed \$47,515 to the Ontario Liberal Party—

The Chair (Mr. Shafiq Qaadri): Mr. Hillier, I would just respectfully caution you. I think you are kind of crossing the parliamentary/unparliamentary line there.

Mr. Randy Hillier: Well, this is a matter of the public record. I'm just bringing the public record to everybody's attention.

The SEIU contributed \$85,595 to the Ontario Liberal Party in 2014. Now, those just happen to be two of the unions that the parliamentary assistant chose to read into the record regarding their support of assaulting workplace democracy.

Just to put it on the record, I don't believe democracy should be for sale. I don't believe that legislation ought to be for sale. Legislation is to protect the rights of the minority. Legislation must be consistent with our Constitution. It does a great disservice to people when governments bring in legislation that knowingly will cross over into unconstitutional grounds and, in this case, cause unions to spend significant amounts of their workers' dues on a court challenge. It costs the Ontario taxpayer significant amounts of money for our lawyers to challenge those constitutional challenges. And it also takes away and diminishes the access to justice for all others who are seeking remedies in the courts, but who are displaced because of constitutional challenges.

We know that this is going to happen. It is evident. You don't have to be a constitutional lawyer. Just read some little bit of jurisprudence and you will come to the same conclusion: that taking away the ability for people to choose who their bargaining unit is is unconstitutional.

So, again, I read this into the record. I'd like to be able to say, "No, our democracy is not for sale. Our legislation is not for sale. I accept or understand the government's arguments. I understand their advocacy. I understand what they're saying." But I can't understand any of it when they are silent, when they choose to be mute on this subject, when they choose not to defend the legislative framework that they've advanced. It is inconceivable that a government would advance legislation and refuse to defend their legislation. That must raise red flags and suspicions by everyone, everywhere. It won't go unnoticed. There can be silence on the government side, but it won't go unnoticed.

Every union worker will know that this government has launched a direct attack on their constitutional rights and they will be suspicious of the motivations as well, because you choose not to defend your position, you choose not to provide a rationale—absolutely no arguments advanced other than an oblique reading into the record of SEIU's and OHA's and Unifor's position, but not actually saying that they agree with those positions, not actually saying that they agree that voting is disruptive and ought to be limited, just using it as a different perspective. But we can see, through that oblique argument, you are saying—because of the absence of any other argument, you have said it in spades—that you believe voting is disruptive and it ought to be limited.

I can say to everybody in this province, whether you're part of a collective bargaining unit or not, when we have a government that puts forth that voting is disruptive and ought to be limited, who knows where they'll go? But it won't be pretty; it won't be nice. Are

we going to see that anybody who was elected with greater than 60% in the last general election will not be contested in the 2018 election because it might be disruptive and it ought to be limited? Foolishness. Foolishness. For five members on the government side who were duly elected, who have sworn an oath, to sit there in silence while they attack constitutional freedoms and constitutional protections is atrocious.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. I would once again just respectfully remind all our colleagues to please adopt parliamentary language.

The floor is now open for any other—Mr. Natyshak.

Mr. Taras Natyshak: Thank you very much, Chair. I am very pleased and honoured to submit to this committee and to get myself on the record. I will try to be brief, Chair. I have to go into the House at 3:30, so I'm only going to take up about 19 minutes and 59 seconds of the allotted 20-minute rotation.

Obviously, the government understands the trepidation which the opposition has indicated around the provisions of schedule 2 in Bill 109. It has been well articulated, I'm sure, through submissions through my colleagues in the House and those who have made submissions to the government prior to the bill being introduced and post the bill being introduced.

I don't know if members of the government understand or know that there was a brief consultation with stakeholders around the bill and specifically schedule 2. I'll point to CUPE's submission that in 2013, the office of the Minister of Labour reached out to CUPE and other unions to consult on the very kinds of changes that we're talking about today, specifically schedule 2 of Bill 109. Following that consultation, CUPE was contacted directly by the Minister of Labour's office and advised that the government would not be proceeding with these changes.

What that indicates to me is that somebody gave their head a shake in the Ministry of Labour's office and realized that this was not going to have buy-in by the majority of the stakeholders. Just on the surface of it, you weren't going to have buy-in. You had ample evidence that this provision was problematic. I would hope that the brain trust within the ministry realized that, ultimately, that specific provision would end up being challenged as a charter challenge, as there's ample jurisprudence around similar attempts to circumvent labour law in other jurisdictions.

1450

I'll point my colleagues across the way to three decisions which have been referred to as the new labour trilogy: the Saskatchewan Federation of Labour v. Saskatchewan, the Mounted Police Association of Ontario v. Canada and Meredith v. Canada. So you've got a track record. You've got precedent there, which should have guided you and should have made you aware that this was a slippery slope, and one that was indeed going to be fought.

However, it's amazing that this government doesn't regard labour rights, as they've been fought for and

legislated over the years, as being sacrosanct. I think that at every turn that I've seen since I've been elected, this government has attempted to tweak and demean and diminish those rights that have been so vehemently fought for over the years. You do an injustice to those who have come before us to ensure that there was fairness infused into our labour law regime. You do an injustice to workers who are seeking to protect and to participate in their democratic right to choose representation in their workplaces. You do an enormous injustice to that history—and to the future, you do damage. This indeed would set us on a slippery slope.

I would imagine, given the government's response and the body language from my colleagues across the way at the moment, that there's no intention of you moving in any direction on this other than forward. It's quite sad, in fact, that no one can turn this ship around. No one can say, "Let's let common sense prevail here," and pull this one back, as it obviously tramples on the democratic right of workers to choose their own representation.

Now, my colleague to the right of me, Mr. Hillier—

Ms. Catherine Fife: To the very right.

Mr. Taras Natyshak: To the very right. He expressed some concern around the 60% threshold. I'll give my friends in the government a little bit of data, a little bit of history. I was elected in the last provincial election with 63% of the vote. Given the conditions of this bill, should, then, in the next general election, nobody from any other party run against me? Should the constituents of my riding not have the right to choose a different representative? My goodness, Chair, I would fight—even though it would secure my job and the honour that it is to represent my riding—against that tooth and nail, because it would represent a tearing back, a clawing back of the democratic process. It's not what we're in this job for. We're in it to protect that process—to nourish it, to support it and to promote it around the world.

There are jurisdictions around the world where workers don't have the right to even be represented by a union. When they do, they receive and are the victim of so much oppression by corporate entities and by government entities. There are labour activists who are jailed, they're abused, they're threatened, they're harassed and sometimes killed, all around the world. You have to be cognizant of the struggles that are happening around the world and that it is our job as a jurisdiction to promote that right, not only because it is democratic—it represents freedom of assembly, freedom of representation, freedom of choice—but it also represents a net economic benefit, if you do indeed believe that labour unions bring an economic benefit to the working class, as we do as New Democrats.

What you're signalling today, as members of the government complicit in this schedule, is that you find the right to choose your representative in a democratic fashion inconvenient and not economical. That's the rationale that I have heard and seen that's been given: that it's too time-consuming and it costs too much money. Make that argument during a general election. I

dare you to make that argument. Say, "We're going to cut down the number of polling stations. We're going to limit the number of ballots that we're going to print."

We've seen that happen before in this government. We've seen threats and challenges and changes and abrogation of the format. Those people, the Harperites, got tossed out of government. Is that the road on which you are treading? It seems as though you are.

Chair, honourable colleagues, I just find this incredibly offensive, given the history of the labour battles that have been waged and fought in Ontario. I find it incredibly offensive as a democratically elected member of this Legislature and I wonder what's next, unfortunately. I wonder, had we not been vigilant as an opposition party and entity, where we would end up. It is, of course, our responsibility to call you out on these, and it's your responsibility to listen. We hope you do.

One of the first things that you learn when you walk into the Legislature, if you take the guided tour, is that on the crest of the moulding on the opposition side—as government members, you'll see the owl that rests on the crest. We look at the eagle. The owl is to try to remind you, each and every day that you set foot into this assembly, to remain wise: to be wise about the legislation that you're putting forward, to give it thought, thorough consideration as to its effects and its ramifications. You have to do that. Despite what your party is telling you to do, you have to voice what you truly believe and know is right and wrong.

And we're talking about fundamental aspects of democracy here. This is the right to choose your representative in a labour setting, in a workplace setting. There's nothing more fundamental than that.

We look at the eagle and it tells us to be vigilant. It reminds us to call you out. The challenge is, obviously, for you to do the right thing. We're telling you here today: Pull this schedule back. As committee members, do the right thing. Talk to your minister. Talk to your leader. Talk to the Premier. Tell them that we can find another way around this.

Democracy isn't that inconvenient, nor should it be seen as such, ever. You'll be forever labelled as the class of 2015 who decided that democracy was inconvenient and that an erosion of labour statutes should ensue because of that.

I don't think we could express our concern any more than we already have. We're giving you an opportunity, as well, to make these changes. Send an email right now. You've all got BlackBerrys ready to go. Fire off a quick email. Say, "You know what? They're making some sense in the committee. They're actually giving us some information that makes sense." Because I can't see it any other way. I can't ever, and will never see the democratic process, the right that's enshrined in the charter, to choose to not only join, affiliate with and choose your representation—I can't ever and will never see that as a barrier, as a burden and as inconvenient.

I'll tell you, I'm ready to fight you on this and I know that there are thousands and thousands of others—not

even activists, just people who believe in and understand democracy—who are ready to do the same. Obviously, the government is willing to take on that fight. They believe that the time is now, at the beginning of their mandate—not even midway through it—and that we'll forget about this. I'm here to tell you today that it will be impossible, and it will be enshrined in the institutional memory of those who are affected.

This doesn't deliver greater patient care in hospitals. It doesn't deliver greater levels of service in other sectors that are affected. What this solely does is expedite and eliminate the process. By expediting it, you quash the rules, you quash the law, and you launch us, then, into a legal battle that's going to be costly. We saw in the AG's report that there really isn't any regard for cost overruns as far as this government is concerned. Money seems to be everlasting and at your own discretion to waste or to spend in any way in which the government sees fit—without any diligence, given the evidence. So that's what we can expect. This isn't something that's novel or an insightful premonition. This is something that you can wholly expect.

But you're not paying the bill; you're not paying the tab. You'll probably never see the lawyers' bills and it doesn't really affect how many Christmas presents you're going to buy for your family members this holiday season. It will be coming directly out of the pockets of the citizens of this province. You'll justify it by saying, "Look, we had to do this because democracy was getting in the way of the mergers that are ongoing and are proposed. Democracy was indeed a barrier, an inconvenience."

I would love to hear—have we heard anything from the government members today on why—

Mr. Randy Hillier: Silence.

Mr. Taras Natyshak: It is silence. I would love to hear that. I would love to hear that. I know I would actually try to find a sub for my House duty just to sit here to hear some justification around that, because it's a really hard argument to make. It would take a lot of guts to stand in this place, in a place that is challenged and is honoured to maintain and to protect the democratic institutions which our laws oversee. It would be hard; it's going to be hard for you to do that. But I look forward to you doing that. It is, in fact, your obligation to do that, to make a critical argument on which you decide, as members of the government, to quash democratic rights to bargain, to negotiate and to join a union, ultimately, because that's what unions do.

Another interesting question: How long has it been since members of the opposition have been members of a union, and did you actually see any benefit in joining a union? Do you even value the fact that workers are represented? It's one of the aspects that I know gave me and my family the ability to raise a family. It gave us economic security and stability. I've been a member of various unions. Some I was a member of when I wished I would have been a member of others. Some I didn't like

the quality and the level of service, and would have loved to have potentially had another union represent us. It would have been my right to do that. You're taking away that right, absolutely telling people that this is the ship that they'll have to sail on, whether they like it or not. You're backing yourselves in a corner that I think is going to be hard to squeeze out of. I'll make it as hard as I possibly can, and I know that those who believe and trust in democracy will do the same, as they always have.

I come from an area of the province in Windsor where labour rights are valued. They're protected and supported and were indeed won. The Ford general strike gave birth to the Rand formula. Do we all know that? The Rand formula gave unions the ability to collect dues from the employees to be represented. That's wonderful. Is that what's next? Are we going to have an attack on the Rand formula? We can't tell anymore what this government's going to do.

At one point, we thought that they weren't going to sell off Hydro One, but now they've adopted the Conservative mandate on selling off Hydro One, and so we see that happening. Is right-to-work legislation next for you guys? Can we expect that coming down the pipe? Because we cannot tell anymore where the Liberal Party of Ontario is ideologically. You say that you believe in progressive values, but at every legislative turn we see a degradation of that. Stand up for what you've campaigned on. Stand up for the principles in which you claim to believe, do the right thing here and pull this schedule 2 away.

The threshold model—again, 60% of the given workforce. What about the other 40%? That's a big number. That's a large amount of people that have ultimately chosen to be represented by another union, obviously, and may be very, very happy with that representation, and have developed relationships. Those union representatives know who they are, know who their families are, know their individual condition, know their individual needs, and you're going to just blanket steamroll over that whole long-standing relationship with this provision.

It's another aspect that I don't think the government has given much consideration to, and one that I wish they would. Even if you have—if you don't see it the way I do, I'd love to hear why. I'd love to hear whether you place value on those long-standing relationships between workers and their given, and chosen, representative.

I've met lots of people who are anti-union. Jeez, I even work alongside some of them most days of the week in the Legislature.

Mr. Randy Hillier: That's not true.

Mr. Taras Natvshak: Well, listen—

Mr. Randy Hillier: That's not true.

Mr. Taras Natyshak: Let's not go that far. Okay.

Mr. Randy Hillier: Let's not go overboard.

Mr. Taras Natyshak: I see the right to join and participate in a union and to bargain freely and collectively as akin and similar to the right of you to choose legal representation, should you need legal representation,

because ultimately, that's what it is. Even though you're not hiring lawyers, many—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak. Your declared 19 minutes and 59 seconds has expired.

Mr. Taras Natyshak: Chair, I can come back again— The Chair (Mr. Shafiq Qaadri): You can, after I

offer the floor to others.

Mr. Taras Natyshak: Oh, I can't wait to do that.

The Chair (Mr. Shafiq Qaadri): And it could be from the NDP, incidentally, but in any case, the floor is now open. Any takers? Mr. Hillier.

Mr. Randy Hillier: Thank you, Chair. I was absolutely confident and positive that Cristina would have jumped in, because we haven't heard her speak to this bill yet. I know that she must have things she would like to share—

Mr. Mike Colle: Point of order.

The Chair (Mr. Shafiq Qaadri): Mr. Colle, a point of order, which I think I can anticipate. And yes, Mr. Hillier, I'd respectfully invite you to call people by their names—

Mr. Randy Hillier: Oh, pardon me. Cristina Martins.

The Chair (Mr. Shafiq Qaadri): Ms. Martins-

Mr. Mike Colle: No, by the riding name. That's the usual procedure.

Mr. Randy Hillier: Not in committee.

The Chair (Mr. Shafiq Qaadri): Well, here, it's fine. "Ms. Martins" is fine. But if we could just preserve some of the formality—

Mr. Randy Hillier: Yes. If we had a seating plan here with the riding names, I'd be happy to use that as well.

However, Chair, I want to just add-we've talked about the constitutionality, the lawfulness. We've talked about a number of things, and we haven't had any response. I just want to put one other thought out for the government members to consider, and that is that presently, if there's more than one bargaining unit, if there's more than one trade union in a workplace, there is clearly—and I think you'll agree with this—competition there. There is competition between unions to provide the highest level of service and representation and advocacy for their members. There is an inherent, innate advantage when people have choice. We see that in all facets, in all matters of our everyday life. Just because one union is bigger than the other, it doesn't mean that it necessarily provides better service or that everybody would want to go there. As an analogy, I'll use Walmart, which is the largest retailer in the province, but we don't all go to Walmart, nor do we want to use legislation to exclude all other competition and just allow Walmart to be the only retailer in Ontario.

1510

But that is what is happening with schedule 2: We're saying, if you're the biggest today, this legislation will enshrine and protect that by eliminating competition for representation in the workplace. Of course, we know that if there is no competition, then there is no incentive to improve. Doing this, allowing this to happen in this

fashion, where the predominant union in a workplace would then invariably—inevitably—become the only bargaining unit in that workplace, would ensure that there is no incentive to improve, no incentive to represent professionally or proficiently. We would see, I think, in due course, in a period of time that the calibre and the quality of representation would diminish.

I can't believe that the members—I can't believe that Mr. Berardinetti, or Ms. Martins would want to see a diminishment of proficient, professional representation of employees by their unions. But that inevitably would

happen.

Again, we wouldn't allow this under any other circumstances. If we look at any other aspect of society, we aren't—or hopefully we're not—going out and purposely limiting competition, purposely excluding people from engaging in the marketplace of ideas, and the marketplace of representation. We want to encourage more and more people to be involved in that marketplace, not less and less.

Again, we've now gone through a number of cycles. We're still not hearing any defence, any justification. I'm sure it must be grating and biting of tongues wishing to be able to speak to this bill, but clearly the government whip is not on the backs but on the mouths of the Liberal members today, preventing them from having a voice, preventing them from a discharge of their duties, a discharge of their responsibilities.

Surely, I can't imagine that there's any member on the government side who doesn't have unionized members as constituents, unionized members on their local riding associations, local unionized members who come in seeking support and advocacy for collective bargaining rights. You must all have that.

I'll just make reference to a member from the third party, Mr. Natyshak: This is not about union-hating or union-liking or—and contrary to the misperception, I myself was a member of the International Brotherhood of Electrical Workers. My colleague Mr. Arnott was also a member of a union.

Mr. Ted Arnott: The United Auto Workers of Canada.

Mr. Randy Hillier: The United Auto Workers, yes. The United Auto Workers is a good thing for me to raise here at this time. We all know that—and Mr. Colle referenced Jerry Dias's comments from Unifor. Unifor is a merged union. They were merged from the communication and power workers' union and the Canadian Auto Workers not that long ago. I believe the communication and power workers' union was the larger of the two unions. Now, of course, they represent people over a wide breadth of workplaces, but all members of both unions chose who was going to be their representative. They chose to amalgamate those two unions, freely, with a secret ballot, and they chose to create Unifor.

I find it quite ironic that the head of that new merged union, Jerry Dias, would find that voting is a disruption and ought to be limited. His own union would not be in existence had it not been for members—employees—

freely choosing which bargaining unit. I wonder if Jerry knew which bill he was supporting when he wrote that letter to you, Mr. Colle, because, as I said, his union would not exist if it was not for a free vote by all members. It was not a case of, "Well, CAW members, you're a smaller union. We're just going to demand that you become part of us." They said, "We welcome that interchange, that interaction, that discussion, and we know that when you have a forthright, honest discussion, even though there may be some confrontation and there may be some concerns, at the end of the day, a better outcome is achieved by having a forthright, honest discussion and a process that recognizes minority rights."

It's clear to me that there's something else at play here by the Liberal government, which is both demanding that there is no demonstration of justification and this willingness to pummel and trample minority rights with schedule 2. There must be. What it is, we can only suspect; we can only infer. I've put out a few ideas of what it may be. There may be others that I am unaware of, but I would be happy to hear what some of those underlying motives are that are hidden from our view and that the Liberal members are refusing to divulge. I'd love to know what they are and I'm sure, at some point in time, we will understand what those motives are and how dark they may be that they don't want them to have any light shed on them and therefore are willing to be absolutely silent. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Ms. Fife.

Ms. Catherine Fife: Thank you, Chair. Indeed, this is an important debate to be having. Obviously, we feel very strongly about schedule 2. We feel strongly about Bill 109.

I have to say, it caught us by surprise that this schedule was contained within this bill. For us, it's a poison pill. That should not surprise this government in any way, shape or form.

I just keep going back to the promises of this government during the last election: governing from the activist centre; putting evidence over partisanship; putting policy over politics; thorough consultation; being truly inclusive of people as policy and as legislation is crafted and developed; and putting people first.

This is the antithesis of that rhetoric. I have to say, I'm thinking that that activist centre is feeling pretty uncomfortable for some people who I regard as progressive people on the government side of the House, who I know have been part of unions and who have been part of the union movement, particularly women who, when you look back at the history of the union movement and how child care was championed in those workplaces, how pay equity was championed in those workplaces, how the rights of workers to work in safe working places, how the rights of women to actually work in workplaces without sexual harassment—so this activist centre is becoming more and more convoluted.

1520

At the time, during the election, the word "progressive" was used quite liberally, one might say. I have to

say that this party is actively redefining the word "progressive." I can actually sense the discomfort that some government members must have on this schedule. I think when we talk holistically and practically about minority rights in the province of Ontario, that it is so important for us who are elected, who are one of 107 legislators in this place, to always have the minority voice at the centre. That's where the activist centre should be. It should be those people in our society who do not have voices. Unions, throughout the history of this province, have given voice to those who do not have power.

What is happening in this committee today, as we try to convince the government to rethink and to completely pull back on schedule 2 of Bill 109, is really, essentially, an exercise in speaking truth to power. Personally, I wouldn't miss this opportunity for anything. I think, as uncomfortable as it is, it is important for the government side of the House, our colleagues, to hear how strongly we feel about schedule 2. I hope that government members go back to their respective ministries and their respective staff—the Poli-Sci 101 staffers who seem to be running the show around here—and tell them very strongly, unequivocally, that schedule 2 is unconscionable.

As the finance critic for the NDP, I have to ask, what is the cost? What is the cost of actually ensuring people have their democratic right to choose their union? Is there a financial cost to this government? Is there a financial cost to society? Is there a financial cost to the members? No. But there is a cost to not ensuring that democratic rights are upheld.

The flip side of this, of course, is that the government is knowingly, intentionally, setting themselves up to go to court. I was warned in the House this morning because of a comment that I said about when we are consulting, when the government—the government does this often. They speak very glowingly about their relationships with First Nations. There are more court cases right now in our courts against this government, especially as it relates to the—it's called the Ring of Fire, but we are commonly starting to call it the ring of smoke, because nothing is happening in that regard. That's where this government is meeting First Nations people, and yet knowingly, if you look—even since the 2014 election, we have seen challenge after challenge, whether or not it's through the collective bargaining rights of the public sector unions, of teachers, of front-line nurses, of education workers, of personal support workers. This government seems complacent in the level of oversight that they wish to hold around democratic and collective bargaining rights. It is a disturbing trend.

I just want to acknowledge that I know for a fact that not all members feel that this is in the best interests of the province and in the best interests of the Legislature, and certainly in the best interests of those who work in the health care and education sectors.

I want to put it on the record, because we've sought legal opinions, as well. We've sought research. We've used the excellent expertise of the legislative library and research services. We've relied on some very strong unions who truly do want to put evidence above politics. We have an opinion here and I want to read it into the record, as it relates to the impending constitutional challenge of schedule 2.

This is what is going to happen:

"In removing the right of workers to elect the union of their choice, Bill 109 would not only conflict with the stated purpose of the Labour Relations Act, 1995, and the PSLRTA, it would contravene the freedom of association provisions of the Canadian Charter of Rights and Freedoms. Three recent rulings of the Supreme Court of Canada have firmly established that freedom of association under section 2(d) of the charter not only protects the right of employees to establish, belong to and maintain a trade union, it also protects the rights of workers to join the trade union of their choice."

We have guidance. It's frustrating, obviously, for us. We're the third party. We try to bring ideas to the table. We try to bring constructive suggestions to the table and to the debate. To just hit a wall, for me, is one of the most frustrating things I've ever experienced. When I did come in, in the minority government setting, I found these committees to be so much more productive, in that there had to be a give and take and there was a genuine interest to sometimes find consensus. When there was disagreement, there was a concerted effort to actually listen.

This is our job in the third party and the official opposition: to bring the dissenting opinions to this Legislature and to this committee, but also to inform the debate and to make sure that the legislation does—one of the tenets of social work is "Do no harm." At least do no harm.

I know that you are all reeling from the Auditor General's report. I have to say, as the finance critic, I'm still working my way through the numbers of that report, but the numbers are astounding. It's true that people get upset when politicians buy a \$16 glass of orange juice, but these numbers are so big. We are in a place right now where the Auditor General from the last report that she delivered said we are going to get squeezed on delivering basic public services to the citizens of this province. That is where we are right now.

So why invest this kind of energy in bringing forward a schedule that actually will cause harm and will cost our democracy and cost the citizens, the taxpayers, stakeholders—whatever you're calling them these days. For me, it makes no sense whatsoever. That's why we're fighting this. That's really the only reason that we are doing this.

When I think of the priorities of where we are right now in the province of Ontario—and I have to say, there's no huge push for this. This didn't come from any union; this didn't come from any stakeholder. In fact, this was not even being driven through the ministry. This is just a knife-in-the-back sort of schedule.

When I think of the priorities that the Ministry of Labour should be focused on right now—for me, it's

hard not to go back to the work that we've been doing over the last three years, ever since Nick Lalonde fell to his death in my riding. The young man was working on a building and he fell. He didn't have a harness on; he didn't have the training. The contractor in question had a questionable history of protecting the rights of workers and informing and training those workers. When I think of what should be happening from a Ministry of Labour perspective, there are so many other issues that we should be championing right now.

Ironically, it's the five-year anniversary of the Dean report. If you recall, there were multiple recommendations from that report. All of them have not been brought in. Working at heights actually has come into play. It rolled out on April 1, 2015. I think, for the most part, the industry is receptive to it. It did take a long time, I have to say. One of those recommendations is still Dean's recommendation 14, which says mandatory entry-level training is to be in place before January 2012. The minister's Chief Prevention Officer is almost three years late on that.

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Dean's recommendation 13: that mandatory training for health and safety reps be in place by January 2012. Again, they're falling far behind with that.

Not to point out all the things that are not happening, necessarily, but my point is that there are other places to invest your energy and to make sure that workers and their rights in the workplace are actually being upheld. When I think back to this place, I think of what this place and what Queen's Park actually means to the people of this province and especially those workers who rely on us to speak for them—they do.

When I think back to when I first started coming back here a long, long time ago, 1997, 1998—

Interjection.

Ms. Catherine Fife: And that was Bill 160, yes. I used to work across the street at the old Toronto Board of Education and I used to come over on my lunch hour to watch question period because it used to be in the afternoon. That's when the amalgamation was happening. With that amalgamation, it was the first time that I actually had to fight for my right to be part of a union because I was a unionized worker when I was doing some settlement work with new immigrants back in the late 1990s.

The original Bill 160 really activated a lot of people, I think. I always thank Mike Harris for getting me so angry that I got off the couch. That merger, though, left this whole process, which is exactly what workers would be going through with this piece of legislation, except if schedule 2 passes, the large union, the one that has 60% of the members, wins automatically.

I just want to tell you what I learned when I went through that process, because I think I was an OSSTF member and then a CUPE member and a CEP member. We got to choose, and so we went to those unions and they had to make the case for membership. So they said to the women in the union, "You know what? I know that

you only make 70 cents on the dollar and this is a priority for our union." One of the other unions came to us and said, "We really do value worker safety. We believe in professional training and we believe in educating our workers so that raises the bar in that particular field," especially as I was doing settlement work and there were a lot of risks attached to that.

So that was the process. I learned so much through it, I have to tell you. Not only did I learn about what kind of union I wanted to be part of; I decided that I wanted to be part of that union and make that union a better place. That was the learning from that process.

The fact that no consultation on schedule 2 has actually occurred speaks to the duplicitous nature of this language around respecting workers in the province of Ontario. Taking away the democratic rights of workers in an amalgamation or a merger if they have less than 40% representation is fundamentally undemocratic. There is no other way to describe it.

I mentioned that five-year anniversary of the Dean report and the swing stage workers who fell to their deaths and how long it has taken us to actually ensure that those lives and the tragic deaths that were preventable—the ensuing legislation has been slowly put into place. The democratic rights of union workers—you have to remember that every single win for every single worker in the province of Ontario has come on the backs of workers before them, and have come through protests and through rallies and through court challenges.

Schedule 2 runs counter to and is a direct contradiction to everything that the Premier of this province said to the people during the last election—every single thing. There is nothing progressive about ensuring that 60% of the people get to choose what the other 40% can be represented through. You can't argue it. You can't defend it. It's indefensible. It shouldn't even be in this bill. There is no rationale for it. There is no call for it. It is just a capricious piece that's embedded in an omnibus bill which has become more and more common for this government to throw at us so that they can, you know, bury these poisoned pills and squeeze us in a political way so that we're voting against some good measures in the bill—because this is not supportable. Schedule 2 needs to come out in its entirety. I would support any member of the government side of the House if they had the courage and the backbone to stand up, speak out and ensure that schedule 2 is not part of Bill 109. Honestly, we would welcome anybody from that side of the House to just do the right thing.

As I've said, this is going to go to court. It has to be challenged. It is such a fundamental stripping of worker rights that it must be challenged. You will see union after union stand up, but hopefully it's not just unions, because this will affect future worker rights, period. If the government can bury a piece of legislation, a schedule such as this, in an omnibus legislation like that, you are basically opening up the doors to challenge the rights of workers on every level, from pay equity to worker safety. You are fundamentally changing the way that we will operate as a province. That's how big this is.

Because we fought so hard—so hard—to get the rights of workers to choose their union, to go through a democratic process, it is a fundamental betrayal of democracy. And you will lose; it is going to go to court and you will lose. You will have wasted tax dollars and time when you should be focused on the labour relations issues that have plagued this government and will obviously transfer into the future.

So the minority rights conversation needs to be championed. It needs to be championed by somebody on the government side, because clearly the Premier has checked out. This activist centre that the Premier ran on in the last election, where apparently there's a banker right in the middle of that centre, deciding that public assets no longer are needed by the province and looking for quick cash—one only has to go through the Auditor General's report. I mean, everything from economic development and employment programs—I can't imagine having to stand up and defend any of this that was in the Auditor General's report, Chair. I just can't imagine having to stand in my place as an elected representative.

The only thing that I could say is that there are some new progressive people who were elected in the 2014 election who must read this and just have their eyes wide open. Clearly for a long time, there have been people in this government with their eyes squeezed shut and just looking the other way on everything from child protection to the environment to the fact that this government has been giving out billions of dollars to businesses across the province and then never doing the financial analysis as to whether or not that money translated into good jobs or a positive economic impact.

On the issue of protecting children, it's five years now since the last Auditor General's report, which clearly said to this government, "You need to get your house in order. You need to get that database of keeping track of where children are, who has come into their lives and who shouldn't be in their lives." That was a contracted-out job that went to a company that has continually failed this government. Yet they still keep getting the same contracts, those contracts continually go over budget and that work is continually not delivered on time. Yet, for some reason, the minister can stand up and say, "Well, this is just a little glitch." This is not a glitch; this is a broken system.

So, with all of these other issues, with those 774 pages that the Auditor General has given to this government, we fundamentally believe that the government has a responsibility to listen to that auditor this time. We are obviously going to hold the government to account in any way, shape or form that we can as the third party to ensure that those recommendations just don't flip back to us in another year or two.

But the issue of schedule 2 is so out of place. I mean, this is really the fundamental piece. This doesn't fit in this bill. This doesn't fit in the mandate letters that the Minister of Labour received—

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The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Fife. The 20 minutes has now expired. The floor is now

open to any other member, including members of the NDP.

Mr. Hillier.

Mr. Randy Hillier: Thank you, Chair, for recognizing me. I thought you might have recognized one of the Liberal members, but clearly, once again, they've chosen the cone of silence as their best means to defend this bill.

I just want to advance one more analogy and one more argument for the government members to consider, regarding schedule 2, and that is that recently—just this week—we passed Bill 115 at third reading. Bill 115, although it deals with electoral boundaries, also deals with mergers and acquisitions, in a sense. As we know, with Bill 115, the riding boundaries will change on a host of ridings, and there will be new ridings established. Just to give you an example, in my riding of Lanark—Frontenac—Lennox and Addington, it's going to be altered to Lanark—Frontenac—Kingston.

In Bill 115, and with the electoral act, we're obligated—mandated—that when there's a new boundary change, there's a new riding association established, and

it's done through votes.

In my particular case, the existing component of the new riding will be about 80%, and then we have about a 20% geographical area which will be incorporated as new. If we were to use the same formula as what's included in schedule 2—if that was the same framework—then that 80% of the riding could just say, "Tough luck. We're not taking any view or any consideration or any vote from new people who are now part of the new riding association." Of course, I would never do that. I'm a strong proponent and advocate for people to make choices, and also to allow people to ventilate and express their ideas and concerns.

So I find it interesting that in the same week that we pass Bill 115, which is consistent with established democratic principles of electing and choosing to elect representation—and all parties supported that Bill 115—the same week, the government is trying to pummel and trammel and trample upon the rights of the minority when they're involved in a collective bargaining arrangement instead of in an electoral riding redistribution. It's

thoroughly and completely inconsistent.

Once again, I'll put it out to the Liberal members on this committee: How can you support Bill 115 in the same week as you're trying to vote in favour of schedule 2 of Bill 109? They're completely, completely contradictory to one another. I'm sure the insides must be in pretzels right now, trying to untie this Gordian knot that they've created for themselves with schedule 2. Really, anybody who knows about Gordian knots—the only way to solve it is to cut it in half. Get rid of it. Cut schedule 2 out of Bill 109. That's the only way that you can actually stand up and hold your heads high and say you've done the right thing, that you're consistent in your defence of the Constitution and consistent in your advocacy for freedom and for democracy; otherwise-everybody will see this-you're just bent over, twisted up, confused and don't know which side is up.

Again, Bill 115: What do you think would happen if you proposed this same framework in Bill 115, to disregard any participation, any election, any choice in establishing those new riding associations and just the larger, more predominant part of the riding would have its say and the only say and others would be compelled—compelled—to trample on those minority rights?

Again, I can see the likelihood of eliciting a response from the three remaining government members—maybe at this point we should call a vote, but the Chair is still

here, so we still wouldn't win.

However, I will ask this direct question to Mr. Delaney, Mr. Berardinetti and Ms. Martins: Why won't you speak? Why won't you defend, or attempt to defend, this trampling of minority rights that you're so eager to have advanced with schedule 2 of Bill 109?

Do the right thing: Stand up and defend it, argue in

favour of it or vote it down. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Just for clarification, voting members on the opposition side include Messrs. Hillier and Arnott and Ms. Forster. The others are there for moral support.

The floor is now open for further comments. Mr.

Gates.

Mr. Wayne Gates: Good afternoon. Thanks for allowing me to say a few words to allow people to have the right to vote.

I actually believe, of most of the people who are around that table and my colleagues, that I probably have the most experience of being an elected official in the union for 40 years. I'm very proud of that—

Ms. Cindy Forster: Forty-two for me.

Mr. Wayne Gates: Forty-two? Wow! I always thought you were a lot younger than I am. I apologize for that, then. I'm not getting into that one; I'd be in a lot of trouble. But at the end of the day—

The Chair (Mr. Shafiq Qaadri): You are welcome to

correct your record, Mr. Gates.

Mr. Wayne Gates: Very good. I appreciate that.

But I think it's important to talk about people having the right to vote. I can tell you that I started in General Motors—I'll say this quickly—in 1973. It was 20 years after the Leafs had won the last Stanley Cup.

Having said that, I went into a workplace that was unionized. I'm very thankful for that. They paid what I would consider, certainly, fair wages back then. I can tell you, at that time, I was making—you guys should listen to it, especially the young people who are here, especially the staffers who are here and the young guy at the end there—\$4.83 an hour when I started in General Motors.

At that time, that was a lot of money. It was my first job. I walked into a unionized workplace—very thankful of that, by the way—and I started to get interested in the union—

Interjections.

The Chair (Mr. Shafiq Qaadri): Colleagues, can I just call to order the background conversations all around and give Mr. Gates the floor? Go ahead.

Mr. Wayne Gates: Thank you very much. I appre-

ciate that, Chair.

I started to get interested in the union after I had been there for a couple of years. I said, "How do you get involved with the union?" They said, "Well, you can run for a position. You can run for the recreation committee or the education committee." But you had to run for everything, for those who might not know—particularly, maybe, on the Liberal side—who are struggling with this. That meant that you could put your name into a box. There's an open period for an election and you put your name in and you can run for a position.

Those who don't know me well—I know there's a few here who may not—I was a sports nut. By the way, I still am. I'm broken-hearted that the Jays didn't sign David Price.

Mr. Mike Colle: I'm not.

Mr. Wayne Gates: But having said that, one of the first things where I thought I could really get involved with the union was the recreation committee and run some sports events, whether it be to a ball game, a hockey game, a lacrosse game. I said, "Okay, so what do I have to do?" Well, you put your name on the ballot, and once the opening period is closed, the membership gets to vote. I thought that was pretty exciting. I had only been there a couple of years. I put my name up. Unfortunately for me, a number of other people wanted the recreation committee because it was a very high-profile job in the plant, because you're running the Christmas party, and the Christmas party meant that you're giving-well, Santa Claus I guess was giving the gifts out, but they were getting gifts, going to see the Sabres play. The first time I ran, I lost. I know a lot of people are going to be surprised at that, but I did lose.

Interjection.

Mr. Wayne Gates: No, it was a vote and I was fine with that. The membership in the plant—at that time there were 10,000 people working there—had the right to vote for me. I went around and introduced myself to a lot of people who didn't know me, because I was a relatively new hire at that time. I said, "I'm Wayne Gates. I'm running for the recreation committee. I love sports. I play hockey. I play ball"—none of them well, but I played and I enjoyed it. But unfortunately, I didn't get the opportunity to win that particular election.

But the key there is the membership chose whether they wanted Wayne Gates or they wanted somebody else. In that particular election, they chose somebody else. Now I wasn't heartbroken. It was my first time running. I got my name around the plant. But again, they had the opportunity to vote.

Over the course of the next little while, I stayed active. I went to the membership meetings. I went to the unit meetings, and because we were an amalgamated local, they used to have unit meetings for the other units. At that time there were 22 units of Local 199. So they had the General Motors unit, which was extremely big, by the way, and then they had some smaller units, like dealerships, credit unions, small manufacturers. So I would go there to try to get my name out and my face out, because

they had the right to do that. They had the right to vote for who they wanted on some of these positions.

So that's what I did. I got my name out there and my face out there. Guess what I did the next time there was an election? Anybody know? Maybe the Liberals can help; it's an easy one. My good friend Mike might know. I ran for recreation again. Does anybody know what happened?

Mr. Ted Arnott: You won.

Mr. Wayne Gates: I absolutely won, and I was thrilled to death. I started running the Sabres trips and running the ball games to see the Blue Jays games. But, again, the key to it was that the 10,000 people who we had working at General Motors there at that time and the people from the small units had the right to select who they wanted or the right to vote for who they wanted on the recreation committee. Then we had a vote to see who the chairperson of the recreation committee was going to be. Again, the key to that is, they're always able to vote. It wasn't that only 60% of them could vote or only 40% of them could vote or, in our case, just the people from GM could vote. Everybody in the small units had the right to vote.

So I think that's pretty interesting. Now, I've got four or five years of seniority. I'm on the recreation committee. It is high-profile. I enjoyed it. Then I thought that maybe I always considered myself a bit of a strong voice for workers and my co-workers. I decided to run as a committee person. People here might not know what that is, but that's a person who would get elected, again by the membership, and if you had a problem between the supervisor and yourself, you would call your committee man. He would meet with the employee, talk to the employee and say, "What's the issue? What's going on?" Then he would meet with the supervisor with the

employee and try to resolve that dispute.

Now, the first time I ran as a midnight shift committee person—because the plant was so big, we ran three shifts, 24 hours a day. And I ran. It was the same process again. A notice goes up for seven days. It's then taken down. The box is open for seven days and then the vote takes place. But the key again is that everybody gets to vote. Whether you win or lose, at least the membership gets to choose who they want for a committee person. Not 40%, not 30%, not 10%, not 5%; everybody in the plant, all 100%, get to vote. I'm glad to say in that particular election, as a back shift committee person, I won. I was a little surprised, by the way, but I won. I ended up being the off-shift committee person, midnight shift committee person in the components plant on Ontario Street in St. Catharines.

At that time, we had about 3,500 employees and I would represent them on midnight shift. Again, it became relatively high profile because what was interesting about that midnight shift was that I had the opportunity to represent production employees, something that even my colleagues would understand. I also had the opportunity to represent skilled trades, whether it be electrician, toolmaker, millwright—and I was a production guy. I

was never a skilled trade guy, but that was part of it. They had the right to vote for their midnight shift committee man, and I was very thankful that they voted for a

production guy to represent them.

But I want the other parties to hear that through this whole process—because this is what the issue is here today in the bill—they had the right to vote. Again, you're going to hear this a lot from me over the next little while: not 10%, not 20%, not 60%; everybody in that plant had the opportunity to vote for me as the midnight shift committee person.

I know everybody's going to be excited about this, as I look across and look over here. I stayed as the midnight shift committee person, elected with the same process, for 20 years. That meant the membership, even though it declined a bit through the years, unfortunately-I was able to stay on that job for 20 years and, much to the chagrin of my wife, I worked steady midnights for 20 years. I can tell all the women here are pretty excited about that, but at the end of the day, I stayed on midnight

shift for 20 years.

I did it for a few reasons, by the way. One, I was a midnight shift committee person. I had the opportunity to work days every other week and then be on midnight shift—I only did it every other week because we switched—but I stayed on steady midnights because I coached both my daughters' baseball teams for about 16 years and, I'm happy to say, winning a couple of all-Ontario championships, because they had a lot of good players, including both of my daughters. So I stayed on

midnights for that reason. But to stay on midnights for 20 years, Chair, this is what I had to do. Every three years, they had to have an election, so the process had to be the same again. They put a notice up for seven days in the plant that there's going to be an election. It's usually held in May or June. You have seven days to put your name in, whether you want to run again or not run. I put my name in every three years. In that seven-day open period, I put my name in, and then seven days later-so the election had to happen within 21 days, seven, seven and seven. I put my name in, and I can say that I won every single election for 20 years.

I always thought it was because I was doing such a great job. Everybody liked me, right? I mean, that's what happens when you get elected. We're probably like that now. Well, what I found out over the course of my career was it was because nobody wanted to be a back shift committee person and nobody wanted to work midnights. So it really wasn't me, but that's how I kept getting elected. They said, "If Gatesy wants to stay on midnights, we'll keep voting for him." I can tell you that I enjoyed it, but then I wanted to do something different.

During that process, again—because I want everybody to hear this, particularly the Chair, because I think it's important: Every single time, the membership in that plant, 100% of them, had the opportunity to vote me in or to vote me out.

I actually enjoyed it, and I thought that I had more to offer to my local union and to my community. I wanted

to be a little more high profile in the union, and there are steps to do that. Normally, you'd go to run day shifts, become a shop committee man and do all that. I wasn't one of those who wanted to wait my turn to move on, so I decided what I would do was I'd go from a back shift committee person to president of my local union. It's a little bit of a jump. It was never done before, but I tried it and the same thing happened. There is the process, that 21-day process. I had to put my name in, and then, 21 days later, I get in and now I'm running for the president of my local union.

At this time, there were around 7,000 or 7,500 members, plus another 21 small units. So what I had to do is gain the respect and the support of the 21 units, plus the General Motors unit, and you do that by going to the gates, handing out leaflets and talking to the membership. But the key to this was that, in all those 21 units, even though I was coming out of General Motors, they had the right to vote for their president.

The other part that was interesting in the labour movement was that when you become an executive board member—I don't even know if they did this with Cindy—the retirees of the local union had the right to vote for their president, because the president helps bargain the collective agreement in the GM unit and those benefits that we fought so hard for. So I had to make sure I got to the retirees. At that time, we had about 5,200 retirees. We had a lot of retirees, another 7,000 in the plant and about another 2,200 or 2,300 in the small units.

I went around, I got my name in and I got on the list. A lot of people thought it was pretty funny that I was trying to go from back shift to president, but at the end of the day, everybody had the right-again, all 100%-to vote. Not 10%, not 20%.

The other thing that was interesting was that the GM people voted for the president, all the small units like FirstOntario, the dealerships, the manufacturers, Brunner and Iafrate—that membership had the right to vote for their president—and the retirees had the right to vote for their president. This was in 1997. I remember it like it was yesterday. Time flies.

I ran for president and I won. I went from back shift man to president. I ended up being president of Local 199 for 12 years—with really no interest to become an MPP, by the way. It was not what I wanted to do. But I wanted to be a strong voice for the auto sector. We were losing jobs. Free trade really affected us. The dollar was an

But the key there is that I had to run again every three years. So every three years I had to run again to become president; right?

Mr. Randy Hillier: Even if you got 60%.

Mr. Wayne Gates: I'll tell you what I got the last time I ran. I don't remember what I got in 1997, but I know that the last time I ran for president-again, with the entire membership voting, and you guys are going to like this, because it was amazing to me-I got 97.9% of the membership, and probably 10,000 people voted.

Ms. Cindy Forster: Very good. With only two running?

Mr. Wayne Gates: There were two running. Most people thought there was only one.

But at the end of the day, the key there was that people have their vote. I really want my colleagues on the Liberal side to listen to this, because it's important. It's important to the membership to feel part of the union. It's important for them to know that they have a say in the leadership they're going to elect, the union they're going to have represent them.

They took great pride in the fact that they'd line up before they started their 6:30 morning shift—6:30 at that time; sometimes it used to be 7 o'clock, but now it's 6:30 in the morning. They would get there early. They would get out of bed early and they would get to the plant at 5:30 in the morning so they could cast that little vote, that vote that's going to determine who is going to be their back shift committee man, who is going to be their day shift shop guy, who is going to be their day shift committee person, who is going to represent them on the benefits side when it comes to benefits and who could be the president.

There was never, ever a number so that only a certain group could vote. "Guys in the cleaning room, sorry, you guys can't vote. Guy over here, sorry, you can't vote. It's only this select group of 60% who can vote to determine who it's going to be." It was always 100%. I don't understand why we are trying to have a 60% rule here. I believe that everybody should have the right to vote.

The other thing that I always thought as president of my local union—because it does happen in the labour movement; I'm sure my colleagues know this, and I'm sure the Chair knows this—is that sometimes, during an open period, the membership can get rid of their union. Who is going to represent them? If they're not happy with the representation and they have some issues with the representation, they say, "You know what? I don't want to be with a union. I don't want to be with that union. I think this union over here may be better for our membership." But guess what they get to do? They get to vote on that decision. That decision is done by a vote of the membership. Not 40%, not 60%, but 100% of that membership has the right to vote during the open period on whether they want the union, and what union they want to represent them.

I want to say to the Chair, very clearly, that as president of my local union, one of the things that I always took great pride in was representing my membership, getting back to them every single day and returning every call that day. I always said that if the membership doesn't want me, they should have the right to vote me out, because they elected me to provide a service and if I'm not providing the service, then they should have a right, during the open period, to get rid of me.

I'm proud to say this: For the 12 years I was president of the local union, nobody left, and nobody wasn't happy with the service we were providing. I had one merger. After I left as president, there was a merger between St. Catharines Hydro and Horizon, I believe it was, up in Hamilton. There was a merger between the two groups. When they had the vote, they went to Horizon. Horizon did have a few extra members—a very close vote—but at the end of the day, what happened in that merger? Well, 100% of the employees had the right to vote for the union that they wanted to represent them. So it ended up being a union that the membership wants.

I think that's the problem that you've got with the 60%. Everybody should have a choice in what union should represent them. I say, with a great deal of pride, that I believe it was my responsibility to give every ounce of energy to the membership to provide a service to them, so that the issues that were important to them were being addressed—and not 60% of the membership. I wanted to make sure I was serving 100% of that membership, because 100% of that membership has the right to vote.

They had the right to vote for me in 1973, when I was going to be what I thought was recreation committee. Three years later, I end up winning that election—but 100% of them. Every three years after that—1976, 1979—I'm giving away my age here, but you get what I'm saying—1985, 1988, 1991, 1994 and 1997—every three years, I had to go back to 100% of that membership and say, "I'm the guy that you want. If you get in trouble in the plant or if you want to know something about your benefits, I'm the guy that's going to help serve you"—not 60%, but 100%. That's the problem here.

The other issue that I have with what's going on here—I'm really trying to be professional, because it really bothers me. I have extremely close ties to fire-fighters, for family reasons. They did an incredible job on saving my wife's life when a drunk driver hit her on Lundy's Lane, and they became really good friends. I became really good friends with them when I became a city councillor, including socializing once in a while with them.

What I don't understand in this—and I know you guys have talked about this and, unfortunately, it's the first opportunity I've had to come in—is why we are doing this to firefighters. The firefighter part of the bill is very good. You have the support of the firefighters right across the province of Ontario—

Mr. Randy Hillier: And all parties.

Mr. Wayne Gates: —and you have the support of my good friends from the Conservatives and my good friends from the Liberal Party. There are other issues that we need to address for them, and we all know what that is, and I think that's going to get done. But in this bill, the firefighters have come to the government and said, "This is what we need"—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Gates. Just to inform you, any speaker is welcome to speak for 20 minutes at a time. That time has now expired. The floor is now open to any others, including members of the NDP, or Mr. Hillier.

Mr. Randy Hillier: Thank you, Chair, for recognizing me once again. In my last round, I spoke about the

motives and that members on this committee, and members in the House, can't understand what the Liberal government's motives are for having schedule 2 in this bill. Of course, their reluctance, their total apprehension and refusal to discuss and put forth what their motives are, that leads to people having suspicions about what these motives are when they won't ventilate them, when they won't shed any light on them, by articulating and enunciating what these motives are.

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I have to wonder—because it is such a dramatic assault on democracy by the Liberal Party with schedule 2—if the Premier, on her recent trip to China, may not have taken a side trip to see Kim Jong-un over in North Korea to get some lessons about how to advance legislation and how to squash and stifle and suffocate the rule of law—

The Chair (Mr. Shafiq Qaadri): Mr. Hillier, I'd once again invite you to keep your totalitarian references to a minimum.

Mr. Randy Hillier: —only as they apply to government actions. I certainly would not stray beyond government actions.

But, clearly, where does this come from? Who planted this seed in the Premier's mind that the role of government is to trample upon and assault democratic rights? I know she has made a number of trips to China in her time as Premier. I think she also went on a few of those junkets while she was transportation minister and held other portfolios.

Again, without any rebuttal or any enunciation by the Liberal members on this committee, who seem willing to accept and to be silent and refuse to discharge their responsibilities and obligations in defence of their constituents, one has to again be suspect of where this idea and where this seed came from.

I suggested in earlier reference, from the public record, that there are significant financial contributions by a few of these unions to the Liberal Party. I believe the SEIU's was \$85,000 last year. Is that a motive? I don't know.

I would love to hear the parliamentary assistant or any other member stand up, speak clearly and say, "No. This was not the result of political donations that created schedule 2. We would not ever advance legislation because somebody donated \$85,000 or \$46,000 to us."

The Chair (Mr. Shafiq Qaadri): Mr. Hillier, I'd once again invite you to observe parliamentary protocol without attributing these kinds of motivations, which is against parliamentary procedure.

Mr. Randy Hillier: Chair, I understand, and I'm really trying to pry out of the Liberal members on this committee just what the justification is. What is the motive?

I think you would recognize, Chair, if there was any response, if there was any justification advanced and put forth, then these suspicions could be allayed and put to rest. But their refusal to do so does raise suspicions in any reasonable person's mind. We know that shedding

light in the dark corners exposes, and, when there's light, suspicions are removed and don't exist.

Apparently, the Liberal members on this committee want to keep certain things in the dark. They don't want to shed any light on their purposes. Maybe it's just the case that the Premier's office has instructed them to shut up, not to say a word, not to advocate for their constituents.

I would think that if this were happening in Ottawa right now or a few months ago in the House of Commons, every Liberal member, including the Premier of this province, would be railing about the tyranny of Stephen Harper muzzling his members, but here we see it happening in spades—not a word of justification, not a crumb of motivation; just darkness and silence.

I think, at the end of the day, whatever happens with this bill, every member of every organized labour group, every trade union, will be suspicious of just what went on here in committee room 1 examining Bill 109 with regards to schedule 2. Every one of them will be saying, "Can we trust these people? Can we have any relationship with any one of these, who will so overtly trample upon our rights at a moment's notice?"

I think it is certainly a grave and serious threat to our democracy, to our rule of law, and it will not go unnoticed. It will not go unnoticed. Every union member out there will know that five members on this committee chose to smack them down, to disregard their rights, and hide their motives while doing so.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier.

Mr. Mike Colle: Mr. Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Colle.

Mr. Mike Colle: I think that we've already voted on a different section of the schedule, and we've just spent, I think, the last three hours on the schedule itself. I think that it's very appropriate, after all this debate, to call the question and call the vote.

Mr. Randy Hillier: Chair, on each-

The Chair (Mr. Shafiq Qaadri): Just a moment.

Mr. Colle, are you asking that the question now be put?

Mr. Mike Colle: Yes.

Mr. Randy Hillier: Chair, there are people—

The Chair (Mr. Shafiq Qaadri): Just a moment.

Interjections.

The Chair (Mr. Shafiq Qaadri): Okay. Just to respectfully advise members of the committee that Mr. Colle has put forward that the question be put. This is to be, then, voted upon. It is not debatable—

Ms. Cindy Forster: Question: Can we get a 20-

minute recess?

The Chair (Mr. Shafiq Qaadri): You are allowed to have a 20-minute recess.

Ms. Cindy Forster: Well, I'll ask for a 20-minute recess. Thank you.

The Chair (Mr. Shafiq Qaadri): But just to be clear, once we return, then we will be proceeding directly to the vote.

Ms. Cindy Forster: No, not on schedule 2. We'll be proceeding to the vote on putting the question.

The Chair (Mr. Shafiq Qaadri): Yes, correct.

Ms. Cindy Forster: And then we can go back to debate.

Interjections.

The Chair (Mr. Shafiq Qaadri): We'll be voting on Mr. Colle's point, meaning that the question be put, and, should that vote be successful, then the question will be put immediately after that, on schedule 2.

Ms. Jennifer K. French: I have a question, a point of clarification or whatever: If there are still issues that I wanted to bring forward, is it inappropriate for me to do so?

The Chair (Mr. Shafiq Qaadri): We're talking specifically, Ms. French—

Ms. Jennifer K. French: On schedule 2.

The Chair (Mr. Shafiq Qaadri): —of schedule 2, not the entire bill, the amendments and motions.

Ms. Jennifer K. French: Right. So while I appreciated my 20-minute opportunity earlier to speak to schedule 2—

The Chair (Mr. Shafiq Qaadri): There's actually—I'm just trying to allow much leeway here, but it's not actually allowed.

Mr. Randy Hillier: One further clarification?

The Chair (Mr. Shafiq Qaadri): All right, clarification.

Mr. Randy Hillier: We did not get to the vote on section 3 of schedule 2 yet.

The Clerk of the Committee (Ms. Tonia Grannum): There are only two sections to schedule 2. We've voted on those; we're voting on the schedule.

Mr. Randy Hillier: No, there's the—when it comes into effect—

The Chair (Mr. Shafiq Qaadri): Of schedule 2, there is section 1, which we've voted upon; there's section 2, which we have voted upon; and now we are considering whether schedule 2 shall carry, of its two sections.

Mr. Colle has asked that the question be put. As mentioned, that is non-debatable and to be voted upon.

Recess has been asked for by Ms. Forster. When the committee reconvenes, that question will be put. Should that vote be successful, the question then will be put, meaning schedule 2. Clear?

Mr. Randy Hillier: No.

Ms. Cindy Forster: Not quite clear. I don't understand-

The Chair (Mr. Shafiq Qaadri): Actually, I'm being re-advised multiple times by my Clerk that there is, in fact, no debate. I'm trying to grant as much leeway for questions—

Ms. Cindy Forster: If it's not debatable, I'm trying to find out the process. Perhaps you could explain the process to us, because I wasn't under the understanding that you could actually put a question under the standing orders while we were in the middle of debate and we still had members who wanted to actually debate an issue.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster.

The Clerk of the Committee (Ms. Tonia Grannum): Mr. Colle had the floor, and when he took the floor, he asked that the question be now put. That is a non-debatable motion. He had the floor legitimately, he asked that the question be now put, so now we have to vote on the closure motion. If that does carry, then the next vote will be on schedule 2 and that question has to be put immediately as well. Once that has been completed, then we do still have the remainder of the bill, schedule 3 of the bill, and then we have to go back to sections 1, 2 and 3 of the bill.

The Chair (Mr. Shafiq Qaadri): Having said that, you are allowed and welcomed and have been granted the 20-minute recess, which commences—

Mr. Randy Hillier: Starts now?

The Chair (Mr. Shafiq Qaadri): —now. The committee recessed from 1621 to 1641.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I'd respectfully invite you to reconvene, please. As you know, we have a closure motion before the floor, as proposed by Mr. Colle. As mentioned, this is a votable, non-debatable motion. We will proceed to that vote immediately.

Mr. Randy Hillier: Recorded vote.

The Chair (Mr. Shafiq Qaadri): A recorded vote—
Ms. Cindy Forster: Recorded vote Chair

Ms. Cindy Forster: Recorded vote, Chair.

The Chair (Mr. Shafiq Qaadri): —has been asked for. I should just mention that, should that vote be successful, we will proceed to the consideration of schedule 2.

I will just advise my colleagues that you are entitled to ask for a recess of 20 minutes' duration before that vote.

Mr. Randy Hillier: Any vote.

The Chair (Mr. Shafiq Qaadri): Well, yes, any vote, but I'm speaking specifically at this time.

There's no other entertainment of any question on the floor. We will now proceed to the vote that the question now be put.

Aves

Berardinetti, Colle, Delaney, Martins, Naidoo-Harris.

Navs

Arnott, Forster, Hillier.

The Chair (Mr. Shafiq Qaadri): Thank you. That closure motion does pass.

We now vote on schedule 2. As I did inform you—

Ms. Cindy Forster: I'd like to ask for a 20-minute recess, please.

The Chair (Mr. Shafiq Qaadri): A 20-minute recess is your prerogative, and 20 minutes begins now.

The committee recessed from 1642 to 1702.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I welcome you back to the continuing deliber-

ations on Bill 109. I'd respectfully ask that only MPPs be seated at the committee table. As you know, we've had a closure motion that has passed. We had a 20-minute recess requested, and that has passed. We will now proceed directly to the vote on schedule 2.

Ms. Cindy Forster: Recorded vote.

The Chair (Mr. Shafiq Qaadri): Recorded vote. The question is now "Shall schedule 2 carry?"

Ayes

Berardinetti, Colle, Delaney, Martins, Naidoo-Harris.

Nays

Arnott, Forster.

The Chair (Mr. Shafiq Qaadri): I declare schedule 2 to have carried.

We now move to schedule 3. I believe that we have NDP motion number 2. Ms. Forster.

Ms. Cindy Forster: I move that subsection 22.1, subsection 1 of the act, as set out in section 1 of schedule 3 to the bill, be amended by striking out "No employer shall take any action" at the beginning and substituting "No employer or person acting on behalf of an employer shall take any action".

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster. The floor is yours for comments, and then I'll

open it up to the rest of the committee.

Ms. Cindy Forster: Thank you, Chair. First of all, I want to say that the NDP is fully supportive of most of schedule 3 and the amendments that we'll be continuing to discuss. Our amendment actually strengthens the government's bill to make sure that there are no loopholes because we know that many times in legislation, there are a lot of loopholes.

We know that many employers, particularly bigger employers, actually hire consultants, lawyers, HR firms and employer advocates to try and make sure that employees do not get their WSIB claims approved. So we want to make sure, when fines are being meted out for either obstructing the process or providing false information—we've all seen this happen in our workplaces—for claim suppression or any of the issues that we're talking about, that we capture all of those people who may be hired, in fact, by the employer.

I wanted to just briefly touch on some of the other pieces of the schedule, the Fair Practices Commissioner.

Now, I've had a number of meetings over the past three or four weeks with respect to the Fair Practices Commissioner, and certainly the people out there in the province of Ontario who have experienced the work of that appointment—I think the appointment has actually been in place since 2003—tell me that they don't even use it anymore because they never get a decision out of the Fair Practices Commission that actually has to do with any policy changes or anything that would assist workers in getting their benefits approved.

They certainly have been coming forward to say they want that position to be independent. They want that position not to be appointed by the board of WSIB. In fact, they would prefer to see the position approved in a way that the other legislative officers here in the Legislature are approved: by unanimous approval of all three parties. Only in that way do they believe that the Fair Practices Commissioner will have independent oversight for their complaints. They want that office to be someone who is credible, who has some understanding of the WSIB process and who will advocate on their behalf because that's what they believe the position needs to be.

That's really all I have to say at this point on amend-

ment number 2.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. French and Mr. Colle—I'll give it to Mr. Colle, if that's okay with you, Ms. French, just to alternate.

Ms. Jennifer K. French: Yes, sure.

Mr. Mike Colle: Just in terms of the amendment, I certainly agree with the need to make sure that claim suppression doesn't take place, because I know we had a deputation that seemed to present the case that it doesn't happen and is very rare, but it is the belief of the ministry that it does happen and it is, at times, insidious, in that it happens indirectly. I can understand why the member put forth this motion, but I just want to say that there is a very specific part of the bill which says that an employer cannot do, either directly or indirectly, on behalf of an employee—an employer can't do that.

In other words, they can't do it through other means or hire, as you said, agents or consultants or whatever they are called. So that, I think, covers that. Plus, as you know, the fines have been increased substantially from \$100,000 up to \$500,000 and I think that will be, also, a deterrent. It sends a pretty strong signal that this claim suppression will not be tolerated. As much as we like the sentiment of what the member is proposing, I think that the bill is strong enough in sending a very strong, explicit message that employers cannot do this themselves directly or indirectly. They will be essentially dealt a heavy penalty on the part of the employer because it might be hard to track if the employee is doing it on behalf of the employer, so this goes right to the employer who gets the fine.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Colle. To Ms. French, then Mr. Arnott.

Ms. Jennifer K. French: Specific to amendment 2 and to the member opposite's—Mr. Colle's—comment that he said "directly or indirectly" when we're speaking about an employer, he thinks that that covers that or he thinks that it's strong enough. We would like it to have the force of law. We're not interested in what we think might hopefully, cross-our-fingers, be strong enough.

This part here where it is striking out "No employer shall take any action" and substituting "No employer or person acting on behalf of an employer shall take any action," this specific amendment—and you are going to see it in others that we're submitting—expands, is capturing an employer's designate. We see that through various

pieces of legislation that talk about the "minister or designate." You recognize that there may be the occasion that the minister isn't available, so a minister or designate. That is the intent of this piece: to capture any instance where people might be working on behalf of employers. It prevents a loophole. We're not interested in more loopholes; that's why we're here. That's why we're looking at this. That's speaking specifically to that wording change.

1710

This schedule of Bill 109, while, as you've heard, we support it in spirit, we also support it in specifics. There is a need to fix an issue that this government and four Ministers of Labour have acknowledged is an issue, this loophole. We're wanting to close it decisively, not cross our fingers that we kind of close it-ish.

The bill that I had put forward, Bill 98, Protecting Victims of Occupational Disease Act, included more. was broader-focused. Bill 109 essentially takes half of that bill and presents it here. But, as I said, it comes from that initial loophole, a loophole that unfairly targets victims of occupational disease. It needs to be closed. We don't need to start creating new loopholes. "Employer" and "employer or person acting on behalf of the employer" are not the same things, so we would like that to be clear, and I don't see how you can argue that, especially when this is a government that puts forward on a regular basis in legislation "minister or designate." That's something that we understand is needed.

I have time to speak to this, don't I?

Ms. Cindy Forster: You do.

Ms. Jennifer K. French: Fabulous

I would like to talk about the similarities between this and the bill that I had put forward addressing that loophole in the Workplace Safety and Insurance Act that has allowed spouses and victims of occupational disease to be denied loss of earnings and survivor benefits. I don't think there's anyone in this room who would not agree with the fact that it is appalling that hundreds of Ontarians fall victim to occupational diseases every year. It's even more appalling, though, when we discover that we're allowing them to be hung out to dry, which brings us back to why we're here and why we're discussing and debating this, and why this is a very important fix.

This is about common decency. As I mentioned, this is a government that has acknowledged that this is an issue that needs to be addressed. There have been four Ministers of Labour since that acknowledgement was made, and still there isn't that resolution. We see this, and, again, it goes half-way. Bill 98 had two halves to the equation and this has half; this goes half-way. Speaking to this specific amendment, "employer or employer designate," again, it's half-way. We have the opportunity to make something strong here; let's do that.

This affects a variety of workers. I had the opportunity to be in Sudbury, which is where I had a chance to meet with compensation representatives from USW 6500, who represent widows and miners who are struggling with occupational disease, who are representing the families of the miners who have passed due to occupational disease. This has been an issue that they have been championing, that the NDP has been championing, that the Ontario Federation of Labour has been championing, and, most recently, the firefighters, once the firefighters started to be targeted by this loophole and by employers realizing that they could capitalize on this awful and mean-spirited loophole.

It is workers from a variety of occupations who have been affected, and, as I said, though firefighters have specifically been targeted due to the prevalence of occupational diseases in their field, this is something that we have the chance to really fix in a substantial way.

In fact, I'd like to take the opportunity, if I may-May I? I may. Okay, good. I would like to read something-

Ms. Cindy Forster: You get 20 minutes.

Ms. Jennifer K. French: Chair, how much time do I have?

The Chair (Mr. Shafiq Qaadri): Probably 15 minutes. I should just remind you: You are, Ms. French, a duly elected MPP. You can do many things. So, while I appreciate your asking my permission each and every time, please-

Ms. Jennifer K. French: Oh, please don't misunderstand that I was asking permission. I'm more asking for confirmation or clarification. Just so we're clear, this is not about permission; this is just being polite.

The Chair (Mr. Shafiq Qaadri): I confirm and

Ms. Jennifer K. French: Yes. I'd like to read something from Hansard from the second reading of my Bill 98, Protecting Victims of Occupational Disease Act— Interruption.

The Chair (Mr. Shafiq Qaadri): Mr. Colle, your colleague officially is not to sit at the table until she's an elected MPP.

Go ahead.

Ms. Jennifer K. French: So I am pleased—

Mr. Mike Colle: Can I go to the back there?

The Chair (Mr. Shafiq Qaadri): I believe—

Ms. Jennifer K. French: See, that's permission.

The Chair (Mr. Shafiq Qaadri): I don't even need unanimous consent for that, Mr. Colle. I think you can.

Ms. Jennifer K. French: I would like to point out that that was clearly asking permission-

The Chair (Mr. Shafiq Qaadri): Which I clarified. Ms. Jennifer K. French: —just to illustrate.

I'm pleased to read into the record something that is

already on the record, from Hansard, from the second reading of Bill 98, from the debate.

I very much appreciated that the Minister of Labour spoke to the bill and participated in the debate. So I would be pleased to share some of those thoughts just as we are heading into schedule 3, and remind the government members that this matters, and I'd like to remind them of what their Minister of Labour has said.

"It is a pleasure, once again, to rise in this House and speak to the bill that's being put forward by the member from Oshawa. Let me right from the start tell the member that I'll be supporting the bill, and certainly I've urged my colleagues to support the bill....

"It's the type of issue that I think crosses those partisan lines. It's wonderful to see an initiative come forward from the New Democratic Party that is very similar to an initiative that's being put forward as a piece

of legislation from the government itself....

"If you look at Bill 98 and you look at Bill 109, you'll find that there are an awful lot of similarities. I'm urging all members of this House, as I said, to support this bill, because I think that as Bill 109 moves through the committee process"—and, by the way, we're in the committee process. Sorry; back to the Minister of Labour—"and amendments and different ideas come forward, opinions come from all three parties during the standing committee process, there may be, in fact, some room where amendments could be brought forward which would actually meet the intent of what the member from Oshawa is proposing in Bill 98."

I'm going to spare us all of these pages.

"Let me close with my thanks to the member from Oshawa for bringing this issue forward. My thanks to her for sitting down with me ... and discussing what she was hoping to accomplish, and my thanks to her for listening to me, as Minister of Labour, explaining how I think that we can work together on this. I think we can get to the place that you would like to see us get to in the end.

"I'm supporting the bill. I hope all members on this side of the House will support the bill, and I'm assuming everybody on that side of the House will as well."

I'm pleased to remind us of the second reading of Bill 98 and to point out the similarity and the shared ideal here that we're wanting to fix a loophole. We're not looking to create more, despite what I had heard in response to this specific amendment.

As I had mentioned, we've been having these conversations now for quite some time. There have been people championing this issue, that was first discovered in Sudbury—four Ministers of Labour. I mean, this has been quite the journey, and here we sit in committee after quite the journey, with everybody weighing in and everyone acknowledging this is an issue to be addressed, and we have the chance to address it.

What we see in Bill 109 is half—half of what needed to be accomplished. It focuses on the surviving spouses and their benefits, and I am awfully glad to see that come forward as a change. But what about the workers who are diagnosed in their retirement with occupational disease? We are continuing to allow them to be hung out to dry, and that's not in the spirit of the WSIA. It's not in the spirit of being Canadian. You don't hang people out to dry who are suffering. When you have someone who has been diagnosed with an occupational disease, the very fact that it is acknowledged to be an occupational disease means that it has come about because of their occupation, because of their time on the job.

1720

What we see as the loophole, as the problem, is that for workers who are diagnosed with an occupational disease in their retirement, "Oh, well, tough luck. You should have been diagnosed the day before you retired if you wanted to benefit." I think everybody in this room understands that that's not really fair. If you contracted an illness—and by the time it's acknowledged to be an occupational disease, you've already jumped through how many hoops to get there—your date of diagnosis shouldn't matter. Oftentimes for those who are suffering from occupational diseases, it's latent onset. The day they're exposed is not necessarily the date that they can be diagnosed. We know that; we understand the nature of disease. But we have an opportunity here to acknowledge that you shouldn't just cross your fingers that if you're going to get sick, you darned well better get sick the day before you retire. That's what it does fundamentally come down to, and that's wrong.

I have lots of other things to say, but I also know that we have many more opportunities to do that. I think I will wind it up for now.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. Mr. Arnott.

Mr. Ted Arnott: I don't want to unduly prolong the debate on this amendment, but I do want to introduce some cautionary points. Again, we heard from the Construction Employers Coalition, the Canadian manufacturers' association—now called Canadian Manufacturers and Exporters—as well as Les Liversidge, who is an expert on workers' compensation issues, that there is no documented evidence that claim suppression is a huge problem in the province of Ontario.

I heard Mr. Colle say that the Ministry of Labour believes it is a problem. I don't dispute that, but I don't think we've seen any overwhelming documented evidence that it is indeed happening in a way that some

organizations are telling us it exists.

We've been told that the claim suppression provisions of Bill 109 are a powerful remedy to a non-existent problem. Allegations of claim suppression by employers have been advanced since the inception of workers' compensation more than 30 years ago, yet major reports have produced no concrete evidence to support these allegations.

Again, we seem to be talking about a problem that doesn't exist, and on that note, I would have to say I'm not convinced that this motion is necessary.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott. Are there any further comments before we proceed to the vote on PC motion 2? Mr. Colle.

Mr. Mike Colle: Yes. As you know, there's—*Interjections*.

The Chair (Mr. Shafiq Qaadri): Sorry—NDP motion 2.

Mr. Mike Colle: —a difference of opinion obviously on this, and I respect those two different opinions. It's just that through the Ministry of Labour it has really come systematically to the attention of the workers in the ministry in the field that there is coercion that does take place. The problem is that it's almost secretive in nature so it's really hard—many employees would be reluctant

to even report it and the documentation might be very difficult. I think that's what the ministry is trying to say, that it's out there. That's just to say that the present WSIA does not have any provision to deal with employers that coerce workers.

So this is a giant step forward, whereby now there's a specific section, schedule 3, which has explicit provisions for the first time in Ontario to deal with coercion. It adds a \$500,000 fine to it, and I think that makes a pretty strong statement and hopefully it will act as a deterrent beyond being a very explicit part of this law in schedule 3.

As much as there's a difference of opinion, I would hope that the members would support the legislation, and not this amendment, because it's already very powerful in schedule 3, plus the \$500,000 fine. I think it's quite a transformative, more powerful tool here to stop workers from thinking—to coerce workers, or employers, from putting forward claims.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Colle. Ms. Forster?

Ms. Cindy Forster: Yes, just a couple of more comments. I wanted to actually address Mr. Colle's original comments about the piece about agents of the employer, HR consultants—those kinds of folks that get hired by employers: that's already being dealt with by using the words "directly or indirectly."

I don't agree that that makes it black and white. In fact, then you get into, "Well, what does 'directly' mean and what does 'indirectly' mean?", as opposed to saying, if you hire any of these folks—if you hire an HR consultant, a lawyer or a WSIB specialist who isn't an employee of the employer—then that, in fact, is indirect. That's why I think we need to make sure that we include examples of who these people can actually be.

With respect to the piece on whether there is a claim suppression problem or not, clearly, depending on who you talk to, you'll get a different answer. But I can tell you that in my experience in the health care sector, there is claim suppression. There is claim suppression in large hospitals. There is claim suppression in long-term-care facilities. While I was actually servicing the Niagara Health System—I think I spoke to this in the Legislature—back in 2005 or 2006 we came upon 700 claim suppressions in one fell swoop for nurses, SEIU members and OPSEU members throughout the Niagara Health System.

What the employer was doing in those situations is that they were telling these people not to file claims, and they would get 100% of their pay. Or they weren't even telling them not to file a claim; they would just continue to pay them and wouldn't submit their form 1s to WSIB. It wasn't until some members then had an occasional sick day where they had the flu, and then they got their paycheque and their paycheque said, "Well, you're only getting paid for nine days this pay period, because you don't have any time left in your short-term disability sick bank."

That's when we actually started to do an investigation by bringing the three unions together and having them go and have a look at this stuff. Then we brought WSIB in and they did an investigation. There was no \$500,000 fine, I can assure you. They were just told, "Don't do that again, but you'll still get your experience-rating rebate back," right? Thankfully, though, we were able to get the workers' sick banks reinstated and get those claims filed and into the system.

So there are claim suppression problems in this province. WSIB just doesn't track them. That's why there are no reports: because they choose not to track those for whatever reason.

Anyway, those are my comments on that piece. If there are no other speakers, Chair, not to do your job—

Ms. Jennifer K. French: Oh, I have one thing.
Ms. Cindy Forster: You have one more thing to say?
Okay.

The Chair (Mr. Shafiq Qaadri): Ms. French?

Ms. Jennifer K. French: Thank you. To go back to the specific wording, I don't understand the push back here from the government. I think you called it quite powerful, strong and transformative, or something like that. No, it says, "No employer shall take any action." That's very specific. That's talking about the employer.

So, as we've talked about, there's going to be a workaround that is going to create a loophole if we don't say, "No employer or person acting on behalf of an employer." We're here debating an issue that came from the fact that miners were dying slowly due to occupational diseases and they were leaving behind surviving spouses, widows. Then, the employers said, "Hey, wait a second. If a worker, a miner, died after he had retired, then his widow's benefits should have been calculated a different way. Let's go after those benefits. Let's target those widows. Let's target grieving widows who have just lost their husbands to a protracted, long-drawn-out occupational illness." They targeted them. One would think they wouldn't because one would expect that employers, who employ people and work with people, wouldn't go after the dollars, that they would recognize the value; they would recognize the situation; they wouldn't kick someone when they were down. But they did. 1730

So when we have the chance here to say, "No employer or person acting on behalf of the employer," we're just making sure that there can't be another loophole. We're ensuring that—you know what? We've already seen a version of this before. Let's ensure that we say what we mean to say: that the person making the decision, either with the badge that says "Boss" or the badge that says "Sub-boss" or whatever, whoever's in that role, can't, in that instance—that they are covered, that they are captured.

I'm going to have the same argument as we get through these amendments, because it comes down to: Why are you being so specific and allowing a loophole to exist, to create one? "Oh, hey, you know what? Let's come up with a workaround for the employers so that they can get around this." You are saying that right out of the gate. We're sitting here and talking about a change that needs to happen, it's been four years in the making, but, "Oh, well, let's give that little workaround. Let's hand it to them."

How are you, in good conscience, okay with that? We can call it transformative, but it's not. We can say that we think it's strong enough, but it doesn't have the force of law. So let's give it the force of law.

What, are we going to hurt employers' feelings by saying, "We wanted to ensure that workers are covered, that people who are needing help, who are challenged in the system—we're going to ensure that they are covered. Don't worry, though, we'll leave you an out"? What? I challenge that. I think that's awful.

The Chair (Mr. Shafiq Qaadri): Ms. French, thank

you. Ms. Forster.

Ms. Cindy Forster: Actually, I just came across this interesting newsletter, the Liversidge e-Letter. I hadn't seen it before when I was getting ready for committee. It actually goes back to 2008.

In 2008, when Howard Hampton was leader of the New Democrats, he was championing this issue of experience rating and claim suppression. He put forward a motion to be debated on May 14, 2008, which said,

"that, in the opinion of this House, the McGuinty

government must:

"—immediately direct the Workplace Safety and Insurance Board ... to eliminate the flawed experience rating program;

"—immediately direct the Provincial Auditor to conduct an audit of the flawed experience rating

program:

"—recognize the fact that tens of millions of dollars have been drained out of the WSIB's accident fund each year"—while we continue to say that it's underfunded and we have this unfunded liability—"by employers who have learned how to play the game of experience rating;

"-recognize the fact that experience rating reduces

employer claims, not worker injuries;

"—recognize the fact that the practice of experience rating actually encourages employers to misreport or under-report injuries and occupational disease, force injured workers back to work before they are medically ready and pay workers sick pay"—which I just talked about in my health sector experience—"rather than have them receive compensation benefits;

"-recognize that this hides the true extent of

workplace injuries and illnesses in Ontario;

"—recognize that employers actually receive rebates after they have been penalized for workplace injuries and occupational diseases and deaths; and

"—recognize that the rebates flowing to employers under the program often exceed the cost of the original

fine."

It was addressed to the Premier of Ontario at the time, the Honourable Dalton McGuinty. Here were are, six or seven years later, and we're just dealing with some of these issues now—all the while blaming injured workers for unfunded liabilities and fraudulent claims. You name it, workers get blamed for it. That's why employers are actually suppressing claims, because they want to get those rebates back.

I think that it's certainly time to move forward to make some improvements. As my friend Ms. French from Oshawa said, these really are just half-measures. There are so many more issues that actually need to be dealt with in the broken WSIB system. I think that starts with the hiring of the new CEO, or whatever his title is, to make sure that it is someone who has some credibility and is serious about assisting injured workers, which is what the legislation was all about, to start with, when workers actually gave away their right to sue and were ensured the right to have benefits. Today we see thousands of claims being bumped up to the tribunal.

In fact, I met with some people from the Office of the Worker Adviser in the last few weeks who tell me that some of those claims were by people who are existing today on Ontario Works and ODSP because their claims have been denied. Their claims, under this current system, will not see a tribunal for up to 10 years. In the meantime, people are losing their homes, they're losing their vehicles. They end up divorced, with family breakups, because they don't have any money to survive in a system that denies their injuries and does not process their claims and their rights to a fair hearing in a timely manner.

Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster. Ms. French?

Ms. Jennifer K. French: I was inspired by my colleague to add a couple of more thoughts.

Historically, when we look at this, and we talk about the historic compromise, the spirit of this legislation, the spirit of the WSIA, was meant to protect workers, was meant to protect people who left their homes in the morning and would go to work, so that they could have a safe work environment and, if something should happen, they could seek compensation. They could rest assured, knowing that should something happen—heaven forbid—they would be looked after. That historic compromise—yes, employers dodged the bullet there. Workers were giving up their right to sue.

We have seen, through the years, I would say, an erosion of the spirit of the act, of what it could accomplish, of what it does accomplish. In our constituency offices—I know I'm not alone here; this is not peculiar to Oshawa—on a regular basis, we are supporting constituents who come in, in various states of need, who are stuck in tangles and snares when it comes to WSIB, who are at various stages of the process, whether it's an appeal process or it's right at the beginning. They don't know what to do. They turn to us, and our offices are not just inundated, but our staff are trying so hard to help them through what has become a really tangled mess.

Are there strong aspects? Absolutely. Are there ways that we can identify to further strengthen? Absolutely. We have debated legislation recently, not just my Bill 98,

but also the member from—I don't remember. Ms. Albanese had brought forward a piece of legislation that was specific and addressed age discrimination. Again, there are so many opportunities to focus in on specific sections of this act and strengthen them.

Speaking back to this specific amendment—I hate to beat a dead horse, but I will, since I have to—we have the chance to broaden it, that we have "employer" only or "employer designate," essentially. There is no cost associated with this; there is no reason that I've heard to debate it other than "Just trust us, cross your fingers, don't worry. We're sure that everyone will play nice." No, they may not. We can hope that they will, and goodness knows, speaking as a New Democrat, I'm always full of love and hope and optimism, but I still know that you would need the force of law behind you to ensure the protections that we would hope for.

One of the things that I had mentioned earlier—and I'm going to come back to it because my colleague, Ms. Forster, talked about the appeals and tribunal decisions. Since 2011—and I mentioned that this issue came up in Sudbury. I would be remiss if I didn't thank and recognize my colleague, France Gélinas, the member from Nickel Belt, who has been championing this issue since it came across her radar back in 2011. Since 2011, there have been 14 Workplace Safety and Insurance Appeals Tribunal decisions that have resulted in the WSIB reducing pensions or the periodic payments to the surviving spouses of workers who had died of occupational diseases.

Originally it was two miners. My understanding is that the employer, with all of the negative media, kind of backtracked and stepped away from it, but the cat was out of the bag. The loophole had been discovered, and flash-forward four years, and all of a sudden, you have lawyers of employers coming out of the woodwork saying, "Hey, look. Here's a way to pull some money back," literally on the backs of grieving widows. I'm just going to let that hang there for a second.

I'm back to the point that, let's not just say "employer," let's say "employer or person acting on behalf of the employer." I'm going to be consistent in calling for this as we look at further amendments, because if the goal of the WSIA and of these conversations is to protect the workers, to protect their families, to protect those the act itself was intended to protect, then let's not undermine that. Let's actually take that opportunity. Let's not go halfway there, and say, "Oh, but what if we hurt some employers' feelings, that we say we don't trust them?" That's not what we're saying at all. We are recognizing, because we are here, that the almighty dollar sometimes drives people to make decisions or to target those who we would hope would not be targeted, but here we are.

Just as a basic explanation of the loophole, widow's pensions were being calculated one way, the lawyers argued that they should be calculated another way, and the lawyers won the argument, even though this was

probably a transformative piece of legislation; even though it was probably quite a powerful and strong section; even though we thought that maybe it was covered, or perhaps we thought that it was strong enough. It turns out it wasn't. The lawyers won the argument because they argued the letter of the law.

But today we're talking about the spirit of the legislation. Why don't we talk about the letter of the law, not just let's cross our fingers?

Chair, I'm not asking permission, I'm just asking for the time.

The Chair (Mr. Shafiq Qaadri): I have 14 minutes. Ms. Jennifer K. French: Time flies when you're having fun.

While I have the opportunity, I would like to just share a couple of thoughts from at least one of the widows I had a chance to talk to in Sudbury: a woman by the name of Gisele Oram. She lost her husband, Harold, to mesothelioma, which is an occupational disease that he contracted while working in the mine.

She said, when I had asked her about the importance of her survivor's benefits that were being targeted because of a loophole, not unlike the loophole we can prevent right now with this amendment, "For me it means life, more or less. Before I finally got the money, I was depressed. People were scared for me that I was going to die, I was so depressed. The government paid for some of the medication. But the government doesn't pay for glasses. Or dentures. It all comes out of pocket and then you have to pay rent after all that. When my husband died, the bill people kept calling me.

"I know that money comes in and I can pay my bills, and ... before that I would be broke after the first week. It means I can breathe.

"Another thing too: I've been sleeping in my La-Z-Boy for four years....

"When the money came in, the first thing I went out and bought was a bed. I was tired of living in a chair."

Chair, I'm sure that you're tired of sitting in that chair, but I—

The Chair (Mr. Shafiq Qaadri): Not at all.

Ms. Jennifer K. French: Wonderful. I, of course, appreciate having the chance to get this important information on record, and to the points we were making earlier when we were debating schedule 2, I appreciate having the chance to speak. I just wish that I had the chance to be heard, and I wish that this information actually could be heard or that I thought for one second that it actually would make a difference and that it isn't just a matter of going through the motions so that we can point to the process and say, "Look at the process we went through." It should be, "Hey, look at the process that we were able to grow through, that we made something better. We made something stronger," and we didn't just hold up our preapproved list of, "Oh, it doesn't matter what they say; we're already going to vote against these amendments", because some person in a backroom doesn't really know what it means to the people of Sudbury, doesn't know what it means to Ms.

Oram or doesn't really care because there's a list of things to do.

This is the democratic process. We've already talked about democracy at length today. The problem is, I think we talk about it and we don't do anything about it, but I repeat myself. I would hate to think that I would start to repeat myself, so maybe I should take a break. Can I call for a recess, Chair? I'd like to call for a recess.

The Chair (Mr. Shafiq Qaadri): We still have Ms. Naidoo-Harris who's asked and she's on record for that.

Ms. Jennifer K. French: So I can't call for a recess? *Interjection.*

Ms. Jennifer K. French: Okay.

The Chair (Mr. Shafiq Qaadri): Just to be clear, you can call for a 20-minute recess and it will be automatically granted when we are voting. If you just call for a recess, then I have to ask for the will of the committee, which I sense will not be granted.

Ms. Jennifer K. French: Oh, okay. Thank you.

The Chair (Mr. Shafiq Qaadri): Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I just want to make a couple of points. Basically, I think that we should be very careful as we move forward with this next little bit. By adding the phrase "person acting on behalf of an employer," we are walking into some very sensitive and complicated scenarios.

We have to remember that the employer and employee relationship is a complicated one and that individuals employed by a corporation are performing obligations on behalf of their employer. By adding this, "a person acting on behalf of the employer," we are really taking a step that's too far and does not recognize the responsibilities that may be implied by an employer on an employee.

So I feel that, really, this is about people's rights and this is about protecting them, and I think what we're doing here is—this scheme does not contemplate im-

posing obligations and penalties on persons other than employers, and I think that is something that has to be emphasized and underlined here.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. The floor is open.

Ms. Forster.

Ms. Cindy Forster: I'll call for a recess.

The Chair (Mr. Shafiq Qaadri): Once again, this recess which you're entitled to call for is not occurring at the time of a vote and, therefore, the request for a recess must be voted upon.

Interjection.

The Chair (Mr. Shafiq Qaadri): Agreed to. Is it the will of the committee—

Ms. Cindy Forster: No. I'm calling for a 20-minute recess prior to a vote.

Interjection.

The Chair (Mr. Shafiq Qaadri): Yes, but I don't think we've moved to the status of voting yet. The floor is still open for comments.

Ms. Cindy Forster: I didn't see anybody raising their hand

The Chair (Mr. Shafiq Qaadri): True. I have to see it. Shall we proceed to the vote on NDP motion 2? Is that the will of the committee?

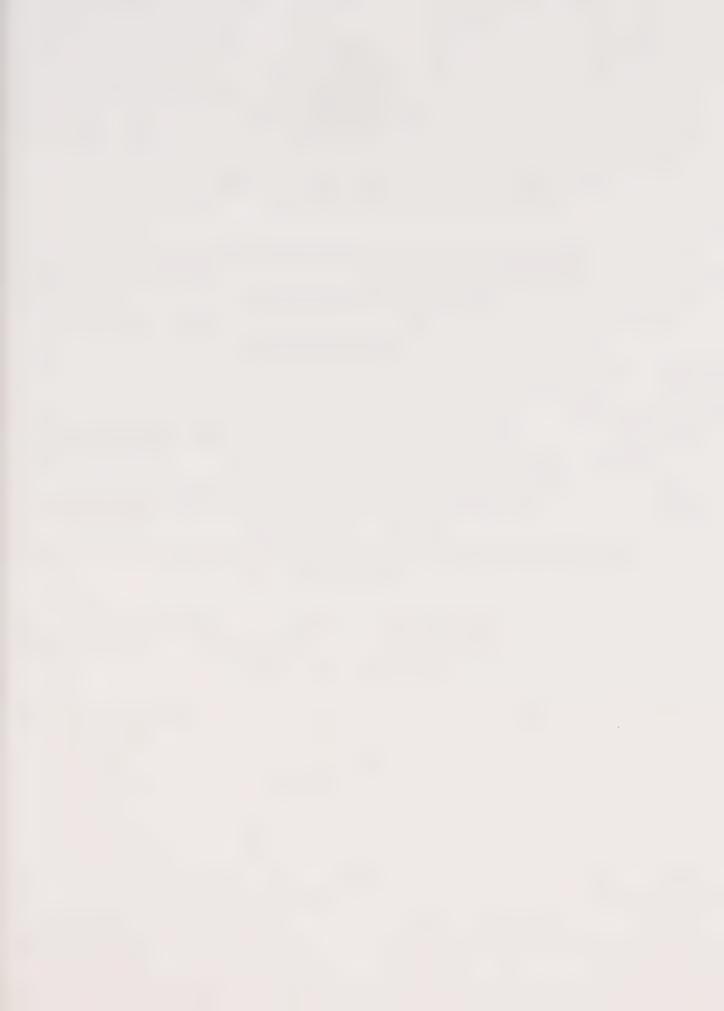
Ms. Cindy Forster: I call for a 20-minute recess.

The Chair (Mr. Shafiq Qaadri): Now your 20-minute recess is granted. I should also just inform committee members that since 20 minutes exceeds 6 p.m., it is essentially deemed that the committee is adjourned. We will now reconvene on Thursday at 9 a.m. on December 10. The first order of business at that committee will be voting on NDP motion 2.

Thank you for your patience and endurance. The committee is adjourned.

The committee adjourned at 1750.





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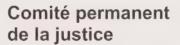
Wednesday 9 December 2015

Journal des débats (Hansard)

Mercredi 9 décembre 2015

Standing Committee on Justice Policy

Employment and Labour Statute Law Amendment Act, 2015



Loi de 2015 modifiant des lois en ce qui concerne l'emploi et les relations de travail



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Wednesday 9 December 2015

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Mercredi 9 décembre 2015

The committee met at 1300 in committee room 1.

EMPLOYMENT AND LABOUR STATUTE LAW AMENDMENT ACT, 2015 LOI DE 2015 MODIFIANT DES LOIS EN CE QUI CONCERNE L'EMPLOI ET LES RELATIONS DE TRAVAIL

Consideration of the following bill:

Bill 109, An Act to amend various statutes with respect to employment and labour / Projet de loi 109, Loi modifiant diverses lois en ce qui concerne l'emploi et les relations de travail.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. Welcome back to clause-by-clause consideration of Bill 109. We have the first 15 minutes in order to complete work on schedule 3. We're still at NDP motion 2. I understand we'll be voting on that immediately. I do inform you that at 1:15, the time allocation will take precedence and there are some other parameters that will follow. I will announce those at 1:15.

At this time, we have NDP motion 2 before the floor. Debate has been completed. As you know, we are in post-recess, post-adjournment so we will now proceed to the vote on NDP motion 2, without discussion.

Mr. Randy Hillier: Recorded vote.

The Chair (Mr. Shafiq Qaadri): With a recorded vote.

Ayes

Arnott, French.

Navs

Berardinetti, Lalonde, Naidoo-Harris, Wong.

The Chair (Mr. Shafiq Qaadri): I declare NDP motion 2 to have fallen.

We now move to PC motion 3. I'll invite Mr. Hillier to please introduce PC motion 3.

Interjections.

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Arnott?

Mr. Ted Arnott: Thank you, Mr. Chair. I understand I'm duly substituted in and I'm standing to move this motion.

The Chair (Mr. Shafiq Qaadri): Yes, so you have before you, Mr. Arnott, PC motion 3.

Mr. Ted Arnott: I move that section 22.1 of the Workplace Safety and Insurance Act, 1997, as set out in section 1 of schedule 3 to the bill, be amended by adding the following subsection:

"Same

"(2.1) For the purposes of subsection (1), the following actions shall not be considered to be prohibited actions:

"1. Any reasonable action by the employer to verify or challenge a worker's claim for benefits under section 22.

"2. Any reasonable action by the employer to accommodate a worker's injury in the workplace.

"3. Any reasonable work-hardening program or other action by the employer to,

"i. facilitate a worker's early and safe return to work, or

"ii. facilitate a worker's early and safe return to his or her pre-injury role and responsibilities.

"4. Any reasonable performance management, corrective action or other action by the employer to correct or improve a worker's job performance.

"5. Investigations related to any appearance, allegation or reasonable suspicion of worker misconduct or of a contravention of the laws of Ontario or Canada."

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott. That's PC motion 3. You have the floor for any discussion—above the cabbies here.

Mr. Ted Arnott: There's still a 6, I think.

The Chair (Mr. Shafiq Qaadri): Pardon me? Did you not read 6? Oh, sorry. Right, go ahead: 6 on page 2.

Mr. Ted Arnott: "6. Dismissal, discipline, suspension or other action by the employer if such action is related to worker misconduct or a contravention of the laws of Ontario or Canada."

The Chair (Mr. Shafiq Qaadri): Thank you. Go ahead. You have the floor.

Mr. Ted Arnott: Mr. Hillier wants to speak to the motion.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier?

Mr. Randy Hillier: Thank you, Chair. Listen, with the time allocation motion that we have in front of this committee and the actions of the government to frustrate and purposely prevent discussion and debate on motions and on this bill, it really becomes moot to discuss these amendments.

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I will say this: There are a number of amendments related to the WSIB section. We're not going to be able to even introduce them, let alone debate them in an intelligent fashion under the time allocation motion.

So I'll put this on the record as I've done on this bill during the debates. First off, there's a fivefold increase being legislated in this schedule 3. The offence moves from \$100,000 to \$500,000 under this act. In addition, you have included a clause for an administrative monetary penalty to also be included in this WSIB schedule. I'm not sure, and I don't want to presuppose, that the Liberal members of this committee understand what the difference is between a provincial offence and an administrative monetary penalty.

With this one, you don't identify what the penalty is. We have no idea. It could be \$10; it could be \$10 million. It will be left up to regulations. Somebody else will decide what the penalty shall be. Right?

But the problem with an administrative monetary penalty is there is no defence against it, unlike the provincial offence, where somebody can challenge that in a court of law and put forward a defence against the Provincial Offences Act.

I would caution the Liberal members to actually understand fully what is proposed under schedule 3. We're not going to have the time to discuss it. We're not going to have the time to debate it. I think when you look at this time allocation motion that's in front of this committee, it is a purposeful attempt to frustrate the legislative process, to obstruct the democratic process, and prevent members of this Legislative Assembly from advocating for their constituents and discussing and debating the merits or consequences of this legislation.

That being said, there is absolutely no value—I find no value—in spending any more time in this committee today under this time allocation process, and I will be vacating my chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Mr. Arnott?

Let me pass it over to Ms. Indira Naidoo-Harris.

Ms. Indira Naidoo-Harris: Thank you, Chair. I want to start off just by making sure that we clarify something. I understand that when MPP Arnott read the section, he referred to it as—

Interruption.

The Chair (Mr. Shafiq Qaadri): Ms. Naidoo-Harris? Sorry, but because of the cab symphony going on, please move a little closer to the mike.

Ms. Indira Naidoo-Harris: Sure. I'm going to move this over.

I just wanted to start out by clarifying things. He referred to it as section 1 of schedule 2. What we're referring to here, just for the record, is section 1 of schedule 3. I'm just making sure that we have it correctly mentioned in the record in Hansard.

Mr. Ted Arnott: Did I say schedule 2? Ms. Indira Naidoo-Harris: Yes, you did.

Mr. Ted Arnott: Oh, sorry.

Ms. Indira Naidoo-Harris: I'm going to recommend voting against this motion, basically because, in my opinion, this particular proposal is adding a section that I feel and that we feel really confuses the bill. What it does is set out a list of things that will not be seen as being prohibited, and the list that is set out here presupposes that a claim has been filed, for example, and that winds up challenging a claim of benefit.

Let me just give you a little bit of an example. The way this amendment sets out how to do things is to move forward with the idea that once a claim is filed, then action will be taken. However, it does not include the possibility that if an employer suggests—or an employee is asked by an employer to suggest—to someone that they not file a claim and maybe even give them some kind of motivation not to do it, that won't be captured with this particular amendment. So I feel that it really gets into some very dangerous and confusing territory. We feel that this is a motion that we will be voting against.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. Mr. Arnott?

Mr. Ted Arnott: Well, I want to thank Ms. Naidoo-Harris for her comments, obviously, and I'm disappointed that the government is not prepared to indicate an interest in supporting this amendment.

This isn't something that we just came up with by ourselves. It was recommended by the Canadian Manufacturers and Exporters, which is one of the most important trade organizations in the whole country, representing manufacturing concerns all across Canada. They have been in existence for more than 100 years. I think all of us know the importance of manufacturing to our economy, and I would submit that we need to listen to them.

Of course, they are quite concerned that section 22.1(2) is too broad and it could lead to administrative obstacles for employers.

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Unfortunately, Mr. Hillier has taken leave of the committee, but I would have to add that I'm totally dissatisfied with this process. This time allocation motion was just tabled late Monday afternoon after this committee had basically one day to deal with clause-by-clause. It is true that we were having significant discussion on some of the amendments and the various clauses, but to suggest that we were unduly delaying the bill, I submit, is a false statement. It was said in the House and I would suggest it is a false statement. We are doing our job, as opposition, by debating this bill.

Of course, the time allocation motion tabled in the House Monday afternoon called for debate Tuesday morning. Here we are, Wednesday afternoon; we've got one hour at best. Actually, at 1:15 I guess we start going through it one by one without debate and then, apparently, it's going to be called for third reading this afternoon. This is not the way to debate legislation.

I know that Christmas is coming and I'm as excited about Christmas as anybody, but I would ask the

members of the government side in particular to take this back to their caucus. If they think about this and reflect upon it, I'm sure that they would agree that there has to be a better way to debate and discuss legislation before we ram it through in this fashion.

The Chair (Mr. Shafiq Qaadri): Ms. Naidoo-Harris? Ms. Indira Naidoo-Harris: I think it's important that when we're talking about this that we stick to section 22.1 of Bill 109 and what we're discussing here at hand. I understand what the member opposite had to say about the manufacturers and their interest in weighing in on all of this.

Whenever you're dealing with legislation, Chair, it becomes a balance: making sure that you're balancing the rights and needs of everyone who is being affected by the piece of legislation at hand. Right now, we're looking at balancing the rights of workers and employers.

We really feel that Bill 109 seeks to prohibit an employer from discouraging or influencing one of their employees from filing a claim to the WSIB. As the bill stands, we feel the language is clear and that it sets out certain kinds of actions that are considered to be claim suppression.

We feel that this amendment actually confuses things and, in essence, perhaps even allows for some type of claim suppression to happen before a claim is filed. That's key. We have to make sure that claim suppression does not occur, whether someone tries to influence someone by suggesting they not file the claim—so that's why I think it's important for us to vote against this amendment.

The Chair (Mr. Shafiq Qaadri): Ms. French?

Ms. Jennifer K. French: How many more minutes do I have left of the time allocation?

The Chair (Mr. Shafiq Qaadri): Two.

Ms. Jennifer K. French: Okay, then I obviously can't wait to get to some of the further amendments, so I'd like to be on record as saying that, of course, I'm immensely disappointed that we don't have the opportunity to discuss each of these amendments in schedule 3 because this is an important section.

My Bill 98 had incorporated two parts. This Bill 109 has taken half of that. I was looking forward to debating and discussing and doing my best to make the case to protect not only the widows' pensions but also workers' benefits. The burden should not be put on surviving spouses, but that is an amendment we won't have a chance to discuss.

We've already hashed it out about employers or employer—the word isn't "designate," but the person acting on behalf of the employer to broaden that to best protect those whom the WSIA seeks to protect, and that is the workers.

Unfortunately, there are a number of weighty, important and meaty amendments coming up that we're just going to have to vote on because of this time allocation motion. As my colleague Mr. Arnott has said, this is not the best way to debate. In fact, I would say this isn't any kind of debate at all.

I'd like to be on record as saying that this is shameful. We're talking about occupational diseases and we're talking about supporting workers and their families and their benefits, but we don't have time for that. We don't have time to weigh in. It's always my pleasure to be here representing Oshawa and those whose voices I'm putting forward, but it is not always a pleasure to sit across from the government, especially when they're just bullying things through as we see today.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French.

I would just officially announce to our committee members that the time allocation process parameters are now in force, which means, just for the record, that there will be no recesses called and we will proceed immediately to the votes on each of the various motions. You are welcome to request recorded votes should you wish. I will not be reading the entire motion, but, for example, I'll be saying "PC motion 3" and then the bold text at the heading. That's mostly for orientation purposes.

We'll now proceed to the vote on PC motion 3. As I say, whether it's a voice vote or a recorded vote, that is your choice.

Mr. Ted Arnott: Recorded vote, Mr. Chair.

Ayes

Arnott.

Navs

Berardinetti, French, Lalonde, Martins, Naidoo-Harris, Wong.

The Chair (Mr. Shafiq Qaadri): PC motion 3 falls.

We now go to NDP motion 4, with reference to schedule 3, section 1, subsection 22.1(3) of the Workplace Safety and Insurance Act, 1997. I'm duly informed that this is out of order because of non-passage of earlier amendments, so it's officially withdrawn.

We're now at PC motion 5, with reference to section 1 of schedule 3. We'll proceed immediately to the vote.

Mr. Ted Arnott: Recorded vote, Mr. Chair.

Ayes

Arnott.

Nays

Berardinetti, French, Lalonde, Martins, Naidoo-Harris, Wong.

The Chair (Mr. Shafiq Qaadri): PC motion 5 falls. Shall schedule 3, section 1, carry? Carried.

We'll now proceed to schedule 3: NDP motion 6. I am also informed that this is beyond the scope of the bill and therefore out of order. It is officially withdrawn.

We'll now proceed to NDP motion 7. This is with reference to schedule 3, section 2, subsection 48.1(2) of the Workplace Safety and Insurance Act, 1997. We'll proceed immediately to the vote.

Ms. Jennifer K. French: Recorded vote.

Ayes

Arnott, French.

Navs

Berardinetti, Lalonde, Martins, Naidoo-Harris, Wong.

The Chair (Mr. Shafiq Qaadri): NDP motion 7 falls. We'll proceed now to PC motion 8. This is with reference to section 2 of schedule 3. We'll proceed now to the vote.

Mr. Ted Arnott: Recorded vote.

Ayes

Arnott, French.

Nays

Berardinetti, Lalonde, Martins, Naidoo-Harris, Wong.

The Chair (Mr. Shafiq Qaadri): I declare PC motion 8 to have fallen.

We'll proceed now to NDP motion 9, with reference to schedule 3, section 2, subsection 48.1(3.1) of the Workplace Safety and Insurance Act, 1997. We'll proceed now to the vote on NDP motion 9.

Ms. Jennifer K. French: Recorded vote.

Ayes

Arnott, French.

Nays

Berardinetti, Lalonde, Martins, Naidoo-Harris, Wong.

The Chair (Mr. Shafiq Qaadri): NDP motion 9 falls. We'll proceed to NDP motion 10, with reference to schedule 3, section 2, subsection 48.1(3.2) of the Workplace Safety and Insurance Act, 1997.

Ms. Jennifer K. French: Recorded vote.

Ayes

French.

Nays

Berardinetti, Lalonde, Martins, Naidoo-Harris, Wong.

The Chair (Mr. Shafiq Qaadri): NDP motion 10 falls.

We'll proceed now to NDP motion 11, with reference to schedule 3, section 2, subsection 48.1(4.1) of the Workplace Safety and Insurance Act, 1997. We'll proceed now to the vote.

Ms. Jennifer K. French: Recorded vote.

Aves

Arnott, French.

Navs

Berardinetti, Lalonde, Martins, Naidoo-Harris, Wong.

The Chair (Mr. Shafiq Qaadri): I declare NDP motion 11 to have fallen.

We now proceed to NDP motion 12, which is in reference to schedule 3, section 2, subsection 48.1(4.2) of the Workplace Safety and Insurance Act, 1997. We'll proceed now to the vote, which is recorded.

Ayes

French.

Nays

Berardinetti, Lalonde, Martins, Naidoo-Harris, Wong.

The Chair (Mr. Shafiq Qaadri): I declare NDP motion 12 to have fallen.

Shall schedule 3, section 2, carry? Carried.

We now proceed to PC motion 13, which I am informed is out of order—beyond the scope of the bill—and is officially withdrawn from consideration.

We will now proceed to NDP motion 14, which I also inform my colleagues was contingent on an earlier amendment passing—

Interjection.

The Chair (Mr. Shafiq Qaadri): —which was contingent on an earlier NDP motion passing, which it did not; therefore, it is also now out of order.

NDP motion 15 is also out of order, having also been contingent on earlier motions being passed, and therefore it is officially withdrawn.

We proceed to the consideration of the section. Shall schedule 3, section 3, carry? Carried.

We now proceed to NDP motion 16 which is in a similar situation—out of order—as foregoing amendments. Dependent passages have not been passed; therefore, NDP motion 16 is also now withdrawn.

Shall schedule 3, section 4, carry? Carried.

The next three sections of schedule 3, sections 5, 6, 7: We have not so far received any amendments or motions. May I consider them as a block? If that's the will of the committee we'll consider them as a block. Shall schedule 3, sections 5, 6 and 7, carry? Carried.

Shall schedule 3 carry? Carried.

Okay. We're now reorienting and going back to the very first section of the bill, for which we have still not received any amendments or motions. Shall section 1 carry? Carried.

Shall section 2 carry? Carried.

Shall section 3 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 109, as amended, carry? *Interjection*.

The Chair (Mr. Shafiq Qaadri): Shall Bill 109 carry? Carried.

Shall I report the bill to the House? Carried.
Thank you, colleagues. If there are no further comments before the floor, committee is adjourned.

The committee adjourned at 1323.

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Standing Committee on Justice Policy

Committee business

Assemblée législative de l'Ontario

Première session, 41^e législature

Journal des débats (Hansard)

Jeudi 25 février 2016

Comité permanent de la justice

Travaux du comité

Chair: Shafiq Qaadri Clerk: Tonia Grannum Président : Shafiq Qaadri Greffière : Tonia Grannum

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 25 February 2016

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 25 février 2016

The committee met at 0901 in committee room 1.

COMMITTEE BUSINESS

Le Président (M. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice.

Welcome, colleagues. Today, as you know, is a hopefully brief and expeditious meeting on organization for hearings of Bill 119, HIPA, the Health Information Protection Act.

The floor is now open for any motions. Madame Indira Naidoo-Harris.

Ms. Indira Naidoo-Harris: Chair, I have a motion about the scheduling of Bill 119 that I'd like to read.

The Chair (Mr. Shafiq Qaadri): Please.

Ms. Indira Naidoo-Harris: I move that the committee consider the following method of proceeding on Bill 119, An Act to amend the Personal Health Information Protection Act, 2004, to make certain related amendments and to repeal and replace the Quality of Care Information Protection Act, 2004:

(1) That the committee meet during its regularly scheduled times on Thursday, March 3, 2016 and Thursday, March 10, 2016, for the purpose of public hearings.

(2) That the Clerk of the Committee post information regarding public hearings on the Ontario parliamentary channel, the Legislative Assembly website, and on Canada NewsWire.

(3) That the deadline for requests to appear be 12 p.m. noon on Tuesday, March 1, 2016.

(4) That the Clerk of the Committee provide a list of all interested persons to the subcommittee following the deadline for requests.

(5) That all witnesses be scheduled on a first-come, first-served basis.

(6) That all witnesses be offered 10 minutes for presentation and nine minutes for questions by committee members, evenly divided on a rotation by caucus.

(7) That the deadline for written submissions be 6 p.m. on the Thursday, March 10, 2016.

(8) That amendments to Bill 119 be filed with the Clerk of the Committee by 6 p.m. on Monday, March 21, 2016.

(9) That the committee meet for clause-by-clause consideration of Bill 119 on Thursday, March 24, 2016 and Thursday, April 7, 2016, during its regularly scheduled meeting time.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. Now, as we're in full committee session, this is actually a votable thing, but obviously the floor is now open for questions. Monsieur Mantha?

Mr. Michael Mantha: I'd like to file an amendment on it.

The Chair (Mr. Shafiq Qaadri): Pardon me, Monsieur Mantha?

Mr. Michael Mantha: I'd like to put in an amendment.

The Chair (Mr. Shafiq Qaadri): Yes, you are certainly able to move an amendment. That too will be debatable and votable and so on. Do you want to do it right now or do you give the floor to Mr. Hillier? Are you moving your amendment now?

Mr. Michael Mantha: Moving the amendment, yes. The Chair (Mr. Shafiq Qaadri): Please go ahead.

Mr. Michael Mantha: I move that the text "That all witnesses be scheduled on a first-come, first-served basis" be struck and replaced with "In the event of oversubscription, the Clerk of the Committee will send each subcommittee member a list of all interested persons following the deadline for requests to appear. Each subcommittee member will submit a prioritized list to the Clerk by 3 p.m. on Tuesday, March 1, for the purposes of scheduling witnesses."

Le Président (M. Shafiq Qaadri): Merci, monsieur Mantha. Comme c'est notre protocole ici, nous avons besoin de votre motion écrite.

M. Michael Mantha: Elle est là.

Le Président (M. Shafiq Qaadri): Pour nous tous.

M. Michael Mantha: Elle est là.

The Clerk of the Committee (Ms. Tonia Grannum): I'm going to go—

The Chair (Mr. Shafiq Qaadri): Are you going to photocopy it, then?

The Clerk of the Committee (Ms. Tonia Grannum): Yes, in English, so everybody knows.

The Chair (Mr. Shafiq Qaadri): Fine. The floor is open for comments until we do that, but technically, we should be considering the amendment.

Go ahead.

Mr. Randy Hillier: We should be considering that amendment before we file any other amendments.

The Chair (Mr. Shafiq Qaadri): Correct.

Let's open the floor for comments on the amendment.

Mr. Randy Hillier: I'll just say that we're happy with the scheduling, the way and the process. We do have one further amendment, but I don't think you'll find it inconsistent with the amendment. Otherwise, we're happy with the amendment and also, of course, happy and in support of the third party's amendment.

The Chair (Mr. Shafiq Qaadri): I'm happy to recog-

nize the general happiness. That's good.

So we're essentially pending for that amendment distribution.

Do you have yours in multiple copies?

Mr. Randy Hillier: I don't have it written.

The Chair (Mr. Shafiq Qaadri): Okay, because we could photocopy—

The Clerk of the Committee (Ms. Tonia Grannum): Sorry—

The Chair (Mr. Shafiq Qaadri): He will move an amendment, but afterward.

Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Thank you, Chair. I think number 5, "That all witnesses be scheduled on a first come, first served basis," is really standard practice in many of the committees. That's generally the way that we move forward with things. It really is a fair way to do things, depending on who puts their name in first. I think they deserve the ability to be heard first on the line. Just my own—

The Chair (Mr. Shafiq Qaadri): Thank you. Just for the committee's information, we have received so far six witness requests.

Mr. Hillier.

Mr. Randy Hillier: That's pretty standard in all our committee business, that first-come, first-served. However, if it is oversubscribed, each caucus has a rotation on selecting delegates. There's nothing untoward about that; it's a fair and reasonable—we have six right now. We have two committee days scheduled for hearings. The likelihood of it being oversubscribed I don't think is high, but in the event that it is, it should not be arbitrary on who gets to make presentations in the Legislature.

Ms. Indira Naidoo-Harris: Chair, if I may? I'm a firm believer in taking the politics out of this process. I think by making sure that we are doing it on a first-come, first-served basis that will basically mean that whoever is here first gets to be heard first, as opposed to prioritized lists that are decided ahead of time.

So I think that the first-come, first-served basis really ensures that the process is fair and equitable to anyone who wants to be heard on this subject.

The Chair (Mr. Shafiq Qaadri): Thank you. Just to inform committee members, we will have space for 36 presentations over the two days, and no doubt—

Mr. Michael Mantha: Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Mantha?

Mr. Michael Mantha: Just on comment that you just made, 36, and we only have six right now, and we're talking an oversubscription. I think the importance of this particular bill that we're going to be dealing with merits a fair opportunity to have individuals heard. We're talking about if we're going to go over and above the 36 when there are presently six. I don't see this as being a big

obstacle for this committee, and I'm certainly not looking at it being political in any way, shape or form. It's just trying to again be fair to the individuals who will be coming forward, if we're going over and above that 36. If we're not, then it's fait accompli. There's nothing to worry about.

Ms. Indira Naidoo-Harris: Chair, if I may?

The Chair (Mr. Shafiq Qaadri): Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: From my perspective, what we really will be entering into is that someone is sitting somewhere and deciding who gets to be heard and who doesn't get to be heard by this committee. Frankly, I do not think that's why the people in this province put us here. I think they want us to hear all of their voices equally, without deciding who gets to be heard and who doesn't get to be heard.

From my perspective, this is the way we normally do it. I understand where you're coming from, but I'm concerned about what kind of territory we may be entering into when we start trying to prioritize who gets heard and who doesn't. I would just appeal to those of you on the other side of this committee to defer to standard practice, which is first-come, first served. I understand your concerns about the number. I think it would be great if we could hear everyone, and hopefully we will be able to, but we won't really know—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris.

Just to inform committee members, with due respect to the arguments being made, the normal, standardized practice is, in fact, to accept all the various requests for appearing as witnesses, depending on the bill. Many of our bills, of course, have been overly subscribed and publicized etc., and we usually are oversubscribed, and then we do in fact submit it to the parties for second consideration. So I simply bring that to your attention.

We're still waiting for the photocopy; otherwise, I would have interrupted this interesting exchange long ago for the vote.

Mr. Hillier.

Mr. Randy Hillier: Mr. Chair, thanks for bringing that. The member said "defer to standard practice." That's what this amendment is about. What she is suggesting is that we remove ourselves from standard practice and go with a new practice.

As the Chair just said, the standard practice is, when it's oversubscribed, each party then goes into rotation. That is not unfair, and it is actually reflective of the non-partisan understanding that committees work in—that each caucus gets to have a selection on oversubscribed.

I think you cannot argue to stand with standard practice and then vote against an amendment that, indeed, is...

Mr. Michael Mantha: Standard practice.

Mr. Randy Hillier: —standard practice.

The Chair (Mr. Shafiq Qaadri): Mr. Mantha.

Mr. Michael Mantha: I don't want to dwell too much on this, but that's the point I was trying to make. When you're looking at a true reflection of what this committee can actually accomplish—it will be this committee that will determine what witnesses are going to be bringing their views forward. So to say that it's not going to be a reflection or you're not bringing politics into it—I really don't agree with that comment. In order for this committee to make a fruitful decision, I think it needs to hear all views.

Again, from the six that we have on the list now, the potential room for 36—I believe we have lots of room to work with.

The Chair (Mr. Shafiq Qaadri): Mr. Potts.

Mr. Arthur Potts: I'm somewhat new to the committee selection process, and I was going to ask the question, Chair, that you answered about the description of standard practice.

I'm on public accounts, but we don't fall into this problem on a regular basis, and we haven't had many opportunities in justice policy to go through it so I can better understand and have an experience of what standard practice is. But I'm a little surprised that the standard practice would be that we would select on a party-by-party basis. I would have thought it would have been in proportion to representation on this committee; otherwise, you're loading the deck against the representation in the House. So I would put that out there. Wouldn't it be a more equitable, democratic structure that reflected the makeup of the House, if we were to go in the order of representation on this committee? I'm just throwing the question out there. I might suggest proposing an amendment to that effect, if—

The Chair (Mr. Shafiq Qaadri): I think we should proceed to the vote on this particular amendment. I think everyone has well established their arguments.

We are now voting on the amendment as presented by Mr. Mantha, which has now been ably distributed in written form to each member. Those in favour of Mr. Mantha's amendment?

Mr. Bob Delaney: Wait a minute. You just went right to it—

Ms. Indira Naidoo-Harris: I was going to request a five-minute recess for us to discuss it.

The Chair (Mr. Shafiq Qaadri): Fair enough. We'll have a five-minute recess. That's fine.

The committee recessed from 0914 to 0915.

The Chair (Mr. Shafiq Qaadri): We'll now reconvene and we'll now proceed to the vote on the amendment as presented by Mr. Mantha and distributed. Those in favour of the amendment, as presented? Those opposed? The amendment carries.

Mr. Hillier?

Mr. Randy Hillier: Chair, I'd like to move an amendment to the motion. That would be item number 10: that the committee hearings on Bill 119 be live-streamed and be conducted in the Amethyst Room.

The Chair (Mr. Shafiq Qaadri): Live-streamed and conducted in the Amethyst Room.

Interjections.

The Chair (Mr. Shafiq Qaadri): They'll distribute it.

Mr. Randy Hillier: I like the easy motions—or easy amendments.

The Chair (Mr. Shafiq Qaadri): It's more democratic, I presume.

Mr. Randy Hillier: Absolutely. I like to broaden the accessibility for people to see.

The Chair (Mr. Shafiq Qaadri): Once again, we're at the photocopy hurdle. The amendment is now before the committee for discussion, if any. Mr. Potts?

Mr. Arthur Potts: I might wait before we discuss it, that I actually see the motion on paper. It's such a complicated, convoluted number 10. And maybe, Chair, you might—what is standard practice? What is the cost associated with that? Is that done on a regular basis? What about scheduling in the room? Do we even know? Is it a moot point?

Chair, I seek your expert advice on this matter.

The Chair (Mr. Shafiq Qaadri): I appreciate your deep concern. As Chair of justice policy, I think we probably have access to the room.

Any further comments, while we're waiting?

Mr. Randy Hillier: Maybe, if I may, I think it's pretty easily understood, even though it's not written and in front of us at the moment. From what I understand, the finance committee meets in Amethyst on Thursdays. However, they're not engaged or seized with anything.

Interjection: Report writing.

Mr. Randy Hillier: They're doing report writing at the present time, so there's—

The Clerk of the Committee (Ms. Tonia Grannum): In camera.

Mr. Randy Hillier: And they're in camera. So there's only the one committee room that we have in the Legislature that has full streaming capability. To use that room for an in camera session would be sort of pointless. This would allow us to—I think that we're all in favour of broadening out the accessibility of the Legislature to our constituents throughout the province.

The Chair (Mr. Shafiq Qaadri): Mr. Mantha.

Mr. Michael Mantha: Chair, I just wanted to make a note that this is the longest shortest meeting I've had in a very long time. I wouldn't want to be in one of your long meetings.

Le Président (M. Shafiq Qaadri): Sans doute, il y en a plus.

Mr. Bob Delaney: I've been in a lot of his long meetings.

Mr. Michael Mantha: Oh, you have been?

Mr. Bob Delaney: I have been. He conducts a good long meeting.

The Chair (Mr. Shafiq Qaadri): Mr. Potts.

Mr. Arthur Potts: Chair, could I get a clarification? If there was a technical glitch that somehow resulted in the streaming not being functional, let's say there was a blackout or some activity, would that preclude the committee from proceeding?

The Chair (Mr. Shafiq Qaadri): I believe the Legislature has duly made note of any acts of God and we are able to deal with them. Thank you, Mr. Potts.

Mr. Arthur Potts: I was thinking more of sabotage.

The Chair (Mr. Shafiq Qaadri): I do remind you, you are on the record and being recorded.

Mr. Randy Hillier: If the Internet apocalypse happened, the committees would still continue.

Ms. Indira Naidoo-Harris: Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Just asking for clarification, then: Would the scheduling be an issue if we were going to be holding this in the other room? Do we foresee any delays in the process laid out?

The Chair (Mr. Shafiq Qaadri): I think that whatever the committee decides, we'd make best efforts. I

don't think rooms are an issue.

The Clerk of the Committee (Ms. Tonia Grannum): The Chair of the justice policy committee would discuss it with the Chair of the finance committee if there was an issue, but I don't foresee one.

Mr. Arthur Potts: Chair, then, can we add to the amendment "if available"?

Mr. Bob Delaney: You actually have to amend the amendment to do that.

Mr. Arthur Potts: If we could make it subject to availability—

The Chair (Mr. Shafiq Qaadri): Mr. Potts, you're free to do what you wish. I think it's understood that it's "if available."

Mr. Arthur Potts: Well, in that case, I'm all in favour of openness and transparency and getting the information as far out as possible.

Mr. Randy Hillier: I knew I could count you, Arthur.

Mr. Arthur Potts: You're the one that told me that it's my signature on it.

The Chair (Mr. Shafiq Qaadri): Do I need Mr. Hillier to reread the amendment or is everyone comfortable with its language, however it is written? All right, shall we proceed to the vote?

Those in favour of Mr. Hillier's amendment, as

written and presented? Those opposed?

Mr. Hillier, I would congratulate you on having your amendment accepted.

Mr. Randy Hillier: Thank you very much, Chair.

The Chair (Mr. Shafiq Qaadri): This is a remarkable day.

Mr. Randy Hillier: It is a remarkable day.

Mr. Michael Mantha: Mr. Chair?

Le Président (M. Shafiq Qaadri): Monsieur Mantha?

Mr. Michael Mantha: I didn't get those same congratulations with my amendment that I put in. I thought it's just fair. If we're going to have a Chair—we need consistency.

Mr. Bob Delaney: I would take the victory and run.

Le Président (M. Shafiq Qaadri): Mon ami, excusez-moi. Félicitations à vous aussi et à votre parti.

M. Michael Mantha: Bien, merci.

The Chair (Mr. Shafiq Qaadri): We are, I hope, now ready to move to the vote on the main motion, as amended.

Those in favour of the main motion, as amended? Those opposed? Main motion, as amended, carried.

Is there any further business before the committee?

Mr. Bob Delaney: No.

The Chair (Mr. Shafiq Qaadri): Committee adjourned.

The committee adjourned at 0922.



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 3 March 2016

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 3 mars 2016

The committee met at 0900 in room 151.

HEALTH INFORMATION PROTECTION ACT. 2016

LOI DE 2016 SUR LA PROTECTION DES RENSEIGNEMENTS SUR LA SANTÉ

Consideration of the following bill:

Bill 119, An Act to amend the Personal Health Information Protection Act, 2004, to make certain related amendments and to repeal and replace the Quality of Care Information Protection Act, 2004 / Projet de loi 119, Loi visant à modifier la Loi de 2004 sur la protection des renseignements personnels sur la santé, à apporter certaines modifications connexes et à abroger et à remplacer la Loi de 2004 sur la protection des renseignements sur la qualité des soins.

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du comité permanent.

Welcome, colleagues and presenters. We are here, as you know, to consider Bill 119, An Act to amend the Personal Health Information Protection Act, 2004, to make certain related amendments and to repeal and replace the Quality of Care Information Protection Act, 2004.

We have a number of presenters. Just to share the protocol, you have 10 minutes for an opening address, to be followed by three minutes in rotation for questions with each party. As is the tradition of this committee, the times will be enforced with military precision.

ONTARIO NURSES' ASSOCIATION

The Chair (Mr. Shafiq Qaadri): It's now my pleasure to welcome representatives of the Ontario Nurses' Association: Ms. Kate Hughes, Mr. Walter and colleague. Please do introduce yourselves. Your official 10 minutes begin now.

Ms. Kate Hughes: Thank you very much. Good morning. My name is Kate Hughes, and I'm here with Danielle Bisnar. We're from the law firm of Cavalluzzo, and we're here on behalf of the Ontario Nurses' Association. I'm here with Lawrence Walter from the Ontario Nurses' Association. I'd like to thank this committee for allowing ONA to come before you and make submissions.

Ontario Nurses' Association, ONA, represents 60,000 front-line registered nurses, nurse practitioners, registered practical nurses, and allied professionals. As such, Bill 119 will impact all of ONA's 60,000 members, as they're health care professionals providing front-line care in hospitals, long-term-care facilities, public health, homes, community clinics and industry.

As a general overview, you should know that ONA supports updating both of the acts that are covered by Bill 119 and supports the principles behind the quality-of-care legislation, which I'm going to refer to as QCIPA, and the Personal Health Information Protection Act, PHIPA. We do, however, have discrete concerns that we would like to flag, and we've also provided you with concrete suggestions for amendments to address these concerns.

We have given you a handout. You'll see in our handout that it has an overview, but it also has two appendices, which are ONA's submissions with respect to various parts of the act where we would like to flag concerns. We've set out those concerns, and our recommendations with respect to amendments. We have tried to be concrete with the amendments, to assist this committee, and we would ask the committee to consider our recommendations.

We would like to start out with dealing with QCIPA, that portion of Bill 119, and that's schedule 2 of the bill. As you know, Bill 119 proposes to repeal QCIPA, 2004, in its entirety and replace it.

As I'm sure you all know, QCIPA came into place in November 2004. It was designed specifically to encourage health care professionals to share information and have open discussions about improving quality of health care that was delivered—to improve patient care by having these open discussions.

We're pleased to see that in QCIPA, 2015, in the proposal, there's a new section 1 which sets out the purpose. We think that it's important to have that purpose, but I think you have to keep that in mind when you consider all of ONA's recommendations.

The purpose of QCIPA, as stated, "is to enable confidential discussions in which information relating to errors, systemic problems and opportunities for quality improvement in health care ... can be shared within authorized ... facilities, in order to improve ... health care."

It was recognized when QCIPA came in in 2004, in the discussions, and recognized in the review committee's report, that the purpose of QCIPA is to create this protected zone, a protected zone of discussion to facilitate learning and systemic change, and to deal with critical incidents. The purpose is to provide this protective zone so that professionals can speak with candour, as the committee has pointed out in their review, so that whatever they say will not be used against them. That is set out on page 11 of the report.

On page 11 of the report, the committee noted that many of the causes behind these critical incidents are complex. You have to have an environment, as they said, where staff can explore what happened and why. QCIPA is intended to help health care professionals identify system and process failures and provide protection, as they say, to share speculation and opinion as part of the investigation of a critical incident. Without it, there's real concern that some staff will not be as forthcoming.

When you look at all of our amendments, please see it in terms of the purpose, which is the stated purpose of the actual matter. If you could look at our amendments, if you don't mind, look at page 10 of the amendments, where we have set out a request that you consider looking at an amendment to clarify what the reviews of critical incidents are. We recommend an amendment to clarify that the review of a critical incident should be conducted under the OCIPA framework.

Our second amendment, on that page below, is to deal with the issue of facts. We've put in a very discrete amendment which would put a definition of "facts" in it. Under QCIPA, there is a series of exceptions to the definition of quality-of-care information. The exceptions set out what wouldn't be protected in that quality-of-care review. This section, as you can see on page 11, creates a definition. What's excluded is information relating to a patient in respect of a critical incident that describes the facts of what occurred with respect to the incident. This is another matter that the committee flagged.

The concern is that facts are often not clear. In a critical review, for instance, if a nurse or any other health care professional raised speculation and opinion, this does amount to facts. We have concerns that this may have occurred. So we ask that that sort of information must remain in the protected zone. This could be dealt with by adding a definition of "facts," and we have put that definition in there. We would hope that you would consider that.

I know I have little time, but if you could look at page 12—I'm not going through all of our recommendations—on page 12, we have a recommendation with respect to removing provisions that deal with quality-of-care information: what the quality of care has identified, if anything, as the cause. We recommend removing this provision as it's inconsistent with regulation 965 of the Public Hospitals Act. The concern is the chilling effect. If you release the information of what people speculate or give opinions on as to cause, this is going to undermine the purpose, which is to have frank discussion and analysis of critical incidents.

Because I'm running out of time I'd like to now touch briefly on PHIPA. Again, our analysis is set out in a chart for the PHIPA. We have three concrete recommendations. I'm just going to speak to one.

One is the reporting provisions with respect to PHIPA. That can be found if you look at page 4. Under the Regulated Health Professions Act there's a mandatory report when a nurse or any other health professional is terminated or resigns to avoid termination. There's an expansion in PHIPA to any kind of discipline.

There are two points that are concerning on that matter. First of all, it's unclear what "discipline" is. That is inconsistent with the Regulated Health Professions Act. It's important to have consistency, and it expands it. So we're concerned about the confusion of having two pieces of legislation with two different mandatory reports.

Secondly, the concern is with respect to what is discipline. This could have an effect with respect to either under- or over-reporting to the college. For instance, if a hospital has a minor PHIPA matter and they want to caution a health care professional and they give an oral caution, if that triggers a mandatory report to the college, the hospital may consider either not doing that caution because of the consequences of the mandatory report, which are extremely serious consequences, or there may end up being over-reporting, where the college has too many different reports to the college. So we would ask that you consider our recommendation, and we have set that out on page 4.

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Two other matters that we have set out—and you can see our rationale dealing with the limitation period. The limitation period currently is six months. We agree that that's too short. We would submit that a two-year limitation period would be more appropriate as it's consistent with civil litigation claims, generally, and it's important to have consistency in the legislation.

We've attached to your report two pieces of legislation—the Regulated Health Professions Act excerpt and the regulation under the hospitals act—for your consideration, to ensure full consistency.

Le Président (M. Shafiq Qaadri): Merci, madame Hughes, pour vos remarques introductoires.

I now offer the floor to the PC Party. Mr. Hillier, you have three minutes.

Mr. Randy Hillier: I'm going to give you my three minutes so that you can continue on if you want some additional time.

Ms. Kate Hughes: Thank you. The other recommendation with respect to PHIPA is the doubling of the fine. We have concerns only with respect to individuals, not institutions. We think that the PHIPA matter is largely a systemic issue. The doubling of the fines for individuals is a considerable hardship and we say is not necessary as \$50,000 is a considerable disincentive.

The Chair (Mr. Shafiq Qaadri): You've completed? Maintenant, je passe la parole à M^{me} Gélinas du NPD.

M^{me} France Gélinas: There have been some who say we haven't reached the right balance between the right of patients who encounter adverse events in the hospital and who want to be able to gain closure and turn the page,

and the need for health professionals to be able to talk freely, look at what went wrong, learn from this and move forward.

Do you feel that the amendments that you're putting forward will still allow family members to gain closure as to what happened to their loved one?

Ms. Kate Hughes: Yes, very much so. We recognize those competing interests, but in many ways, the competing interests are dealt with by a recognition that if you have a protected zone that deals with the areas where someone can speak with candour—their opinion and speculation—as opposed to what truly are facts. That's why we have focused with very concrete suggestions on defining facts so that it's clear that what is then disclosed are truly facts as opposed to areas of, "Let's raise how we could improve this."

Health care professionals are saying, "What went wrong? What could we do differently?" That's not necessarily a fact, and that's the area that needs to be protected. If it's not protected, then we're really not going to have good quality-of-care meetings where people are coming forward with frank and full discussions. I think it meets that tension and that balance, and that's why we have focused on a number of areas to try to make sure that we ensure that balance so we don't undermine the whole purpose of the act. We end up throwing out the baby with the bathwater where you would make it a process where people are actually not using these meetings for full and frank discussion.

M^{me} France Gélinas: I was trying to read quickly while you were speaking. Are you proposing a new definition of what constitutes a fact?

Ms. Kate Hughes: Actually, if you look at the matter, an exception to the protected zone is facts. We have no problem with that, but as the committee noted in their report, there are different views on what are facts. As a lawyer, we know that every day, people have different views of facts. What we're asking for is a definition of facts so that it's clear what is to be released and what is

M^{me} France Gélinas: Have you proposed one?

Ms. Kate Hughes: Yes, we have proposed a definition with respect to facts. You can find that definition on page 10, at the bottom right-hand corner, where we add a definition of facts, and we've put in a specific suggested wording—

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas. The floor now passes to the government side: Ms. Indira Naidoo-Harris.

Ms. Indira Naidoo-Harris: Thank you so much, Ms. Hughes, for coming in today. I wanted to thank the Ontario Nurses' Association for being here. I know that you all represent a very important part of the delivery of health care to our province and to residents in this province. The work that the tens of thousands of nurses and health care professionals do on a daily basis is very much appreciated by the province and by those of us who use the health care system. I just want to make sure that I start out by thanking you for all of this.

I also want to thank you for the submission that you've made today. It is very clearly well thought-out and well researched. There's a lot of information in there that I think will be very useful as this committee looks forward to what our next steps are and as we consider Bill 119.

One of the things that struck me in your presentation was what was clearly a deep commitment by the ONA, concerning the proper delivery of health care and the quality of health care that we're delivering. It was clear to me that your priorities are delivering good health care under what can of course be very difficult circumstances, when it comes to emergency situations and so on, and taking into account the patient.

My question to you is: From your perspective, how important is Bill 119 to the work of nurses and delivering that quality care?

Ms. Kate Hughes: It's extremely important, both components of it. For the QCIPA portion, nurses are very interested in making sure that when there are critical incidents, they're properly reviewed in a full and frank way, so that all members of the team can speak with candour, and that, going forward, the system is changed, because it largely deals with systemic problems. That's what is dealt with in critical care incidents, as opposed to discrete issues of a health care professional being, for instance, incompetent. It's very important that this process be properly balanced, with respect to the information that's given to the patients and the information that is kept confidential, in order to make systemic changes. So that's very important.

With respect to PHIPA: Nurses have learned a lot about protecting patients' information, and they want to make sure that there is a system that is in place that does protect patients' information but that recognizes the realities of nursing: that nurses touch upon personal health information frequently in many different ways. For instance, if there is an inadvertent breach—and the breach could be in a number of ways that are without ill intent, like releasing information to a family member—that the penalties are not too draconian. It has to achieve that balance.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris, and thanks to you, Ms. Hughes and your colleagues on behalf of the Ontario Nurses' Association, for your presence and deputation.

ONTARIO HOSPITAL ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward: representatives of the OHA—the Ontario Hospital Association. Ms. Reynolds and Ms. Taylor, please come forward.

Welcome. Please be seated. As you've seen, you have 10 minutes for your opening remarks. Please begin now.

Ms. Kristin Taylor: Good afternoon. My name is Kristin Taylor, and I am the vice president of legal services and general counsel at the Centre for Addiction and Mental Health. With me today is Rita Reynolds, the

chief privacy and freedom of information officer and vice-chair of the research ethics board at North York General Hospital. We're here today on behalf of the Ontario Hospital Association, the body that represents Ontario's 147 publicly funded hospitals.

The OHA and its member hospitals support the ongoing commitment to patients' rights and are dedicated to ensuring appropriate safeguards are in place. We appreciate the opportunity to provide comments to the standing committee regarding Bill 119, the Health Information Protection Act, 2015.

Our comments today will be divided into two parts. Part 1 addresses the proposed changes to the Personal Health Information Protection Act, PHIPA, including additional measures designed to enhance the protection of personal health information and the proposed framework governing a future provincial electronic health record; part 2 will address the revised Quality of Care Information Protection Act, QCIPA, which implements recommendations of the QCIPA review.

Ms. Rita Reynolds: It's a privilege to be here.

It is the OHA's belief that the adoption of enabling information technologies and integrated electronic health records is foundational to the future of our health care system and its ongoing efforts to improve the delivery and quality of care. Protecting the privacy, confidentiality and security of patient information is fundamental to the process of facilitating patient care through improved information technology and integrated digital records.

Part of creating the necessary privacy framework is to clearly identify who has custody and control of personal health information. As the legislation is currently drafted, it is not sufficiently clear who has custody and control of personal health information in the electronic health record. As such, when personal health information flows from the health information custodian to the prescribed organization, it is ambiguous whether the health information custodian continues to be accountable for the information in the system, even though they will only have a very limited ability to exercise control over that information.

The OHA believes that any accountability a health information custodian has for personal health information in the electronic health record should reflect the health information custodian's actual level of control over that information. Accordingly, we recommend that the statute be amended to explicitly acknowledge this, as doing so will help to clarify roles and responsibilities with respect to the electronic health record, and accordingly will also increase patient and health care provider confidence in the system.

Our second recommendation is that the electronic health record privacy advisory committee should play a more central role in the development stage of the electronic health records. By giving the advisory committee the ability to study all aspects of the legislation and the electronic health records, the OHA believes that the most effective mechanisms to address the technical elements

of the system will be put into place. The OHA also recommends that the legislation provide additional transparency regarding the advisory committee's membership and its deliberations, as well as enhancing its discretion to address issues proactively.

Our third recommendation relates to the mandatory reporting of privacy breaches. It is exceedingly important that privacy breaches are dealt with effectively and that health care providers are held accountable for their actions, especially where they intentionally breach privacy. The legislation proposes to add a new requirement for health information custodians to notify the Information and Privacy Commissioner of a privacy breach, in circumstances to be set out in future regulations.

The OHA supports mandatory reporting of significant privacy breaches. We agree that the Information and Privacy Commissioner must be made aware of serious and systemic breaches so that it can provide guidance, as well as support the prevention of further breaches.

The OHA believes that IPC notification should mirror legislation in most other Canadian provinces, specifically where there is a serious or systemic breach, and to provide for other breaches to be addressed at the institutional level. The regulations should set out objective criteria for notification, such as the number of patients affected by a privacy breach, whether the breach is intentional, whether there is the possibility of harm to the patient resulting from the breach, and in consideration of the sensitivity of the information at issue.

If the government were to pursue mandatory reporting of all privacy breaches, the OHA believes that it will be critical to ensure that the reporting structure is something that hospitals can effectively operationalize within their current staffing and resources. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you very much for your presentation. Now I offer the floor to the—

Ms. Kristin Taylor: Sorry, back to me for part 2.

The Chair (Mr. Shafiq Qaadri): Please. Yes, you have four minutes left.

Ms. Kristin Taylor: My apologies.

In 2014, the OHA participated as a member of the QCIPA Review Committee, which had focused its work on the interpretation and implementation of QCIPA in the investigation of critical incidents. Implementing the QCIPA Review Committee's recommendations, including amendments to QCIPA, is an important step in providing greater clarity to this legislation to support the enhanced clarity of definitions, support disclosure, and the involvement of patients and their families. The OHA supports the recommendations stemming from the review.

Hospitals and the OHA are working to align practices in the use of QCIPA, in particular working towards more uniformity in the application of the act. As such, the OHA believes that a mandatory approach to QCIPA should be considered. If so, it must be systemic in nature and it must account for the various contexts in which QCIPA is used.

The OHA is concerned that any recommendations allowing the minister to restrict or prohibit the use of the quality-of-care committees for critical incident reviews would be outside of the mandatory public consultation provisions that apply to other regulations made under QCIPA. This may make it possible to target individual providers rather than approaching the issue from a systemic point of view. The OHA believes that such a mandatory approach to the use of QCIPA should be informed by a rigorous public and stakeholder consultation process.

Our final recommendation today relates to an appeal mechanism for QCIPA. The OHA understands amendments to QCIPA may be introduced that would allow the IPC to access quality-of-care information for the purposes of determining whether or not QCIPA would apply to records at issue; specifically, an explicit permission for hospitals to disclose quality-of-care information to the commissioner. The OHA cannot support such an amendment to QCIPA.

Given the ability of IPC to compel production of records, this would effectively require hospitals to disclose quality-of-care information to the IPC upon request. The IPC, as a matter of course, would be making determinations regarding whether or not QCIPA applied in a particular context and whether certain information would be considered quality-of-care information. This has the potential to erode the purpose of QCIPA as the absolute guarantee of a safe place for discussion.

While QCIPA does address disclosure of information, the purpose of the legislation is to improve quality of care by encouraging health care providers to conduct reviews, identify root causes and ultimately improve safety. The OHA firmly believes that any appeal mechanism must support this goal while also ensuring that the legislation is used effectively.

In conclusion, the OHA and its members reaffirm our commitment to patients, enhancing patient care through new technologies and ensuring continuous quality improvement in all aspects of patient care, including those in response to critical incidents. The OHA looks forward to continuing to support Ontario's hospitals through the transitions to come in the e-health environment and across the health care system.

We'd be happy to take any questions.

The Chair (Mr. Shafiq Qaadri): Thank you very much, and thanks for your precision timing. The floor goes now to Madame Gélinas.

M^{me} France Gélinas: Thank you. I will start with the last recommendations that you make regarding the Information and Privacy Commissioner. Could you explain what the role of the Information and Privacy Commissioner would be if they are not allowed to ask for that information?

Ms. Kristin Taylor: We would say that the appeal mechanism does not necessarily require the input of the Information and Privacy Commissioner. An appeal mechanism might be something considered to be to the patient ombudsperson or another process where the

automatic permission granted to the IPC to look at those records would have a higher threshold or more rigour prior to being provided to the IPC.

M^{me} France Gélinas: Do you feel that if there is a higher threshold the absolutely guaranteed safe place to talk about what went wrong will be maintained, and where would you put that threshold?

Ms. Kristin Taylor: To answer the first part, I think a higher threshold and more of a formal appeal process—one that would have less of a permissive or discretionary approach to it—would protect, and that's the goal of the OHA in making this recommendation.

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The threshold, similar to other court proceedings when you're dealing with very delicate and confidential information such as this, would allow a single decision-maker to look at the information. It would be held in great confidence to be looked at in the context, and a decision would be made prior to it being disclosed further, so the IPC process would be less formal than what the OHA would decide—

M^{me} France Gélinas: So who would be the arbitrator of that? Who would decide?

Ms. Kristin Taylor: Well, it could be, if there was a different process that went to the IPC—something that was a bit more formal so that it was a single person—the commissioner himself, or something potentially into the court system, so you actually had an application made to have this information looked at.

M^{me} France Gélinas: Okay. You see the value of having those safe places. You see that it has improved our health care system. So the goal of what you're asking us to do in this recommendation, and the one before it, where you ask the minister to restrict or prohibit the use of the quality-of-care committees for critical incident reviews—so the aim of that is really because you want to protect that safe place? Is this what you're trying to do?

Ms. Kristin Taylor: Yes. I think that while the OHA believes in the transparency and full accountability of the health care providers in any incident, and the desire to share the information learned with the family, with the patient involved in these, the risk you have is that if the information is openly accessible by the IPC, or the minister has the discretion to simply—

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas. The floor now passes to the government side: Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Thank you so much for coming in today. I want to thank the Ontario Hospital Association for presenting here before us today. As we all know, you are a very important partner when it comes to the delivery of health care in our province.

I'm very pleased that you're here today with us, but also pleased—as you mentioned earlier—that you participated as a member of the QCIPA review committee. That committee was fairly thorough and released a number of recommendations in its report to the minister. As we all know, the minister accepted all the recommendations put forward. They were fairly detailed,

and a number of different issues were raised and addressed in that report.

I'd like to ask you, on behalf of the Ontario Hospital Association, which is such a key partner in our health care system: does this legislation really address most of the recommendations put forth by the committee?

Ms. Kristin Taylor: I believe it does. I do believe that the review undertaken with respect to this legislation has gone the distance in addressing the issues that had been complained about prior. With regard to the family involvement, the patient involvement, the sharing of information, there were a lot of misunderstandings about QCIPA prior that I believe the legislation, particularly in the preamble comments, will go far to explaining—that this isn't about hiding information; it's about learning. However, the learning circle needs to be extended to families and to patients.

I think one of the key aspects that is coming out of this legislation is the sharing of information across the sector. I had the privilege of working with Health Quality Ontario on the development of the reporting system that will be put in place as part of this legislation and following the review. That's going to take us to an entirely different level of learning and information sharing in this province, because hospitals are no longer going to have their learning kept in silos. They're going to share it, and hopefully that's going to go a long way to preventing similar incidents from happening at other health care organizations.

Ms. Indira Naidoo-Harris: Implicit in some of your comments was the idea, of course, that this is also about protecting patients and protecting their personal information and their rights. We're all aware, when we go into a hospital situation, that it's usually in a critical situation, and it's really a crisis kind of situation that people are dealing with, so you feel fairly vulnerable.

Tell me: From your perspective, how important is it that we do protect patients' information?

Ms. Kristin Taylor: I'll speak very quickly on that point, from the QCIPA perspective. I think that you've actually touched upon the main misunderstanding about QCIPA when it was discussed extensively in the media. Oftentimes it wasn't QCIPA from preventing—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. To the opposition side: Mr. Hillier.

Mr. Randy Hillier: Let's see if we can speak real quickly here in these three minutes. First, I understand that on page 4, you have the electronic health records advisory committee. Is there a report from that committee, and if so, can that be tabled with the Clerk of the Committee?

Ms. Rita Reynolds: The OHA will be submitting the proposed amendments to the legislation later today.

Mr. Randy Hillier: Okay.

Ms. Rita Reynolds: But I do not have a specific report in my—

Mr. Randy Hillier: From the health record privacy advisory committee, there is no report?

Ms. Rita Reynolds: I do not have a specific report.

Mr. Randy Hillier: Okay.

Ms. Kristin Taylor: That's the creation of that committee.

Ms. Rita Reynolds: Yes, that's what it's really referring to.

Mr. Randy Hillier: Okay. Two other things: Clearly, there's a concern that the mandatory reporting will be unduly burdensome, and maybe you could take a moment to describe what is happening right now with reporting and how you see that this may be a significant burden.

The other comment is on the appeal mechanism. I find it interesting that you're suggesting that possibly the courts would be a better remedy or appeal mechanism than the Information and Privacy Commissioner. I'm of the view that appeals and the seeking of remedies ought to be as expeditious as possible, and the courts don't bring those words to my mind. So if you could address those two points.

Ms. Rita Reynolds: I'll speak to the question related to the mandatory reporting. There is a very wide variation in the types of privacy issues that can occur in a hospital. One of the things that can happen is that a clinician can hand another clinician a file, and it's not a file for a patient they are providing care for. Under the legislation, in fact, that is a breach, because they're not providing care. Immediately, when it's recognized, it's passed back. I would suggest that this is not a significant enough breach to report to the Information and Privacy Commissioner.

On the other hand, you can have situations of someone going into patient charts and browsing through them. Intentional breaches of privacy like that are very, very serious and should be reported. But if we were to consider both things equally—both are breaches—there would have to be an extremely sophisticated and onerous reporting mechanism to identify and to report, and I would suggest that it would very quickly be very difficult to operationalize within existing hospital resources.

Mr. Randy Hillier: Once that is reported, though—let's say that insignificant breach of handing a file—what would that—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier, and thanks to you, Ms. Reynolds and Ms. Taylor, for your deputation on behalf of the OHA.

MR. JOSEPH COLANGELO MS. MARIA KATHERINE DASKALOS

The Chair (Mr. Shafiq Qaadri): We now invite our final presenters of the morning session, Mr. Colangelo and Ms. Daskalos, to please come forward. Your time begins now. Your time has begun.

Mr. Joseph Colangelo: Thank you. Good morning, members of the committee, and thank you for hearing us.

We will split our presentation. Ms. Daskalos will speak from a practical perspective; I am a lawyer and will speak from the legal perspective. My submissions on Bill 119 are limited to schedule 2 only, the QCIPA

amendments. I will not read the presentation, but rather supplement it with some comments.

The problem is this: If you read what was said in the QCIPA review and what was said by the minister, the principles and the objectives are laudable—a just, transparent culture, a new age. Great. Then you read the legislation and you ask yourself what happened.

The fact of the matter is that the legislation is confusing. It's not accessible and, in terms of accessible justice, the average person really doesn't know what it means.

Is there a difference between the QCIPA review and the critical incident review? The sections are in two different statutes, one under QCIPA and the other one under the regulations in the Public Hospitals Act. They should be consolidated.

But more importantly, you're talking about an important aspect of access to justice in which we are all participants: not just the legal profession, not just the courts, but the Legislature that makes the laws.

0940

The problem is that the suggestion that there will only be full, true and plain disclosure if there is some protected zone or freedom from retaliation is flawed. There is no evidence of that. Health care professionals have a fiduciary duty of disclosure. They have an obligation to make full, true and plain disclosure of error.

In my respectful submission, the legislation should be rejected. In its place, you should have legislation that simply states the following:

- (1) That hospitals, hospital administrators and health care professionals in the team have a fiduciary obligation to make full, true and plain disclosure to the patient, or the patient's representatives, of all information relating to the care provided or any health care error. That's entirely consistent with the current law in fiduciary obligations;
- (2) That the critical incident and QCIPA review process be consolidated in one statute to make it clear that there is one committee, one body, undertaking the investigation and that has complete control of the process; and
- (3) The legislation should state that the patient, or the patient's representative, has a right to full, true and plain disclosure from this committee of all the information obtained in the course of the investigation and any recommendation.

The provisions in the legislation, particularly sections 9 and 10 of the bill, schedule 2, are out of step with the current state of the law as described in paragraph 13 of my submission. The Court of Appeal has been very clear on the issue of remedial measures: That information is admissible in a court of law. The amendment is going the other way and is inconsistent with the just, transparent culture for which everyone is arguing.

Consistent with the rule in Sandhu, the principle in the legislation should be this: The information obtained by QCIPA and the recommendations may be admitted in any legal proceeding except where its prejudicial effect

outweighs its probative value. That's the exact rule in Sandhu. That is the current state of the law.

In my respectful submission, this bill does not accomplish the very laudable objectives that were stated. It's time for the Legislature, in my respectful submission, to move forward to be the champion of access to justice of patients' rights.

Ms. Daskalos will now put this in particular perspective in so far as the case of her mother is concerned.

Ms. Maria Daskalos: Hello, everyone. My name is Maria Daskalos. I'm the daughter of the late Dimitra Daskalos, who passed away at Toronto General Hospital on February 21, 2011. I would like to provide three specific examples—out of several, mind you—that our family personally encountered throughout my mother's care over the years that highlight the prevalent culture of non-disclosure that exists in our health care system.

In 2007, my mother was admitted to TGH with heart failure. A few days before she was about to be released and on the evening of April 15, 2007, she was overdosed with haloperidol, a drug that was actually removed from her list of medications. The nurse ignored this directive and administered a double dose of haloperidol that put her into a drug-induced coma where she almost died. She required a life-saving blood transfusion and did not wake up for several days, never to be the same.

The hospital refused to provide copies of the chart that clearly showed when the medication was given and the name of the nurse who administered the drug. On December 7, 2010, we finally obtained copies of the actual chart review. The drug was given to my mother at 22:00 hours, 10 p.m., and then again at 23:30 hours, 11:30 p.m., by the attending RN. An incident report was never filed and the nurse was never reprimanded.

My mother was admitted again to Toronto General Hospital in July 2010. On May 19, 2011, we submitted a complete authorization form and a \$30 fee to request my mother's entire patient records, including administrative notes and patient relations documents, for the period of July 11, 2010 until February 21, 2011, the day she passed away.

Her records were prepared with a fee attached of \$548.75 in order for them to be released. I contacted the privacy commission to complain and they deemed that the costs were not considered reasonable and, eventually, they were waived by the University Health Network. These documents included the various tests my mother received, but did not include any of the administration's notes or that of patient relations. We have yet to receive those.

The final and most detrimental act of the hospital administrators that led to my mother's death occurred when the hospital ignored infection control protocols and placed four infected patients, one right after the other, in her semi-private room. The outcome, of course, was predictable: She contracted the virus that one of the patients was carrying and, unfortunately, she passed away. This was completely avoidable, but the administrators chose

to purposely place an older patient, considered high risk, in harm's way, and we have yet to obtain an explanation.

They also refused to disclose the types of viruses the patients were infected with to the provincial coroner. The coroner's investigation statement explained that "a coroner does not have the legal right to seek out information about the medical status of the individuals who shared Mrs. Daskalos's room."

Since that day, our family has been asking for information, and we have gone to great lengths to attempt to receive it: We presented a petition to the government with 5,400 signatures; we had our case included in the provincial Ombudsman's annual report; we have written letters to the hospital president, the current and past Premier, the current and past health minister—

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Maria Daskalos: —all unwilling to provide answers.

It has been five years with no results and no investigation. Crucial information has been withheld, which we are entitled to and that our family needs in order to achieve closure.

How can the government claim that the system is open and transparent after listening to my mother's case? How is that possible? My mother's case echoes thousands of others. I hope you make the right decision when it comes to this bill.

Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Daskalos.

We'll now offer the floor to the government side: Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Thank you so much for coming in, Ms. Daskalos. Thank you very much for presenting what I think has to be difficult for you to do. I want you, first of all, to understand that we all share your loss and how you must be feeling about that, and that people on all sides of the table here really understand how difficult it must have been for you to come in here. A touching and moving presentation, for sure.

I understand, and I know you understand, that sometimes the situations that are presented in hospitals can be very challenging, but I want you to know that that's why we are here today. We're here, on all sides, because we want to hear out members of our communities like you. We're here to try to make sure that we're doing the right thing when we come up with amendments for a bill.

That's what this bill is really trying to do. The minister and folks like us who are voices for our communities are here because we want to improve things. This proposed legislation does aim to improve the protection of personal health information and respond to the need for greater transparency and appropriate disclosure.

I understand that you were facing a very difficult situation. We want to affirm the rights of patients to access the information about their health care, but still making sure that QCIPA doesn't interfere with a health facility's duty to disclose information to patients.

After hearing your story, I have to ask you: Can you tell us what these amendments really mean to you? I

hope you recognize that this is a step the government is trying to take to ensure that we do the right thing.

0950

Ms. Maria Daskalos: Well, I'll have Joe answer that because he obviously knows the law. He's a highly respected lawyer in his field. I can tell you, it's a very simple answer from the patient's perspective and the family's perspective: full disclosure, open transparency, no loopholes. This bill does not address that. I'll let Joe answer that question.

Ms. Indira Naidoo-Harris: Thank you.

Mr. Joseph Colangelo: If I may. Ms. Indira Naidoo-Harris: Yes.

Mr. Joseph Colangelo: If you look at the bill and you go through the language, it's a lawyer's dream come true. You will be arguing about this bill again in four to five years. I can tell you that defence lawyers, as is their job, will work through the language and will see how there is some foundation for the withholding of information. The definition of "quality of care information" is so broad that I suspect a good defence lawyer is going to say that it includes statements taken promptly and immediately after the incident—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. The floor passes to the PC side: Mr. Hillier.

Mr. Randy Hillier: I don't know where to begin. Thanks for your presentation today. I think it's interesting to hear a very different opinion and view. I'm not sure what else to ask you other than, once this committee is finished, I'd like to get your phone number and have a more detailed discussion on these statements. In a nutshell, I guess I'd say you're suggesting that this legislation is completely contrary to recognized jurisprudence and due process, and we're going in the wrong direction here. That's a significant view, and I think it's time that we take a little more time, step back and take a look at this legislation in a different light.

Thank you for making your presentation, and I'm sure you'll be hearing from us on the phone sometime soon.

Mr. Joseph Colangelo: I would be delighted to expand upon my analysis, and I can. I tried to keep it brief with a minimum of legal authorities, but any help I can be to the committee and to the Legislature, I would be delighted to offer.

Mr. Randy Hillier: Yes, 10 minutes doesn't give us a whole lot of time to get in-depth on this, but you certainly will be hearing from us. Thank you very much.

Mr. Joseph Colangelo: I'm delighted. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. To Madame Gélinas.

M^{me} France Gélinas: All right, so in practical terms, because we have created those quality-of-care discussions that are the safe place where, if you say "quality of care," you know that none of that information will ever be shared with the people affected—you are telling us that this is at the core of our legislation and this is wrong because it basically keeps people from getting closure. Am I right in what I'm saying?

Mr. Joseph Colangelo: It is wrong for the following reason: I have not seen any evidence-based study that says that the need for the safe place is required in order to compel people with a fiduciary duty to make full, true and plain disclosure, as is their right. I, as a lawyer, have a fiduciary duty to make full, true and plain disclosure to my clients. I can't claim some quasi-Fifth Amendment right. My profession—my oath of office in the profession, as does the obligation of health care professionals—doesn't entitle you to stand quiet and doesn't entitle you to a safe place of protection. That's part of being a fiduciary. You don't get that privilege.

M^{me} France Gélinas: Do any other workers in other fields—I'll exclude lawyers and judges from that—have this right to, if you think that you screwed up, you will call a quality of care or colleague someplace else, and you can share your screw-up with all of your peers knowing full well that the people that were affected by

your screw-up will never know?

Mr. Joseph Colangelo: I'm not sure what happens in other professions, but people with fiduciaries do not have the right to remain silent, nor is there a disciplined, rigorous study that complies with principles that both doctors and lawyers—and legislators, I would assume—require. The gold standard is what's called a randomized controlled, double-blind study. That is evidence-based medicine; that is evidence-based law. I don't see any

study that justifies the safe-place regime.

M^{me} France Gélinas: We have the nurses, the hospital administrators and everybody come and tell us that they need that safe place to learn from their mistakes. They use language that is way more political than I do, but at the end of the day, if you screw up, you have this safe place to say, "Hey, guys. We screwed up. Let's try not to screw up again." But you certainly don't want the patient, who lives with consequences of your screw-up, to know. If there was solid, double-blind evidence to say that that helped improve quality, would you change your mind—

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas, and thanks to our presenters, Mr.

Colangelo and Ms. Daskalos.

Before we return in the afternoon, may I just politely suggest that we do away with so much "screwing" and kind of elevate the language of this committee?

The committee is in recess until 2 p.m. today. *The committee recessed from 0956 to 1402.*

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I call the Standing Committee on Justice Policy to order. As you know, we're here for the afternoon session to consider Bill 119, An Act to amend the Personal Health Information Protection Act, 2004, to make certain related amendments and to repeal and replace the Quality of Care Information Protection Act, 2004.

CANADIAN NURSES PROTECTIVE SOCIETY

The Chair (Mr. Shafiq Qaadri): We have four presenters this afternoon, beginning with representatives

of the Canadian Nurses Protective Society: Ms. Lawson, Ms. Lawson and Madame Léonard. Are they all here? Yes, go ahead.

Ms. Chantal Léonard: Ms. Lawson and Ms. Lawson

are not here today, so it's myself only.

The Chair (Mr. Shafiq Qaadri): Okay, fair enough. You have 10 minutes to make your intro remarks, to be followed by questions in rotation, three minutes each, and the timing will be enforced rigorously. You are invited to please begin now, and do introduce yourself, please.

Ms. Chantal Léonard: My name is Chantal Léonard and I'm the CEO of the Canadian Nurses Protective Society. Honourable members of Parliament, thank you very much for this opportunity to comment on proposed changes to Bill 119. I know that the proposed amendments to legislation also focus on quality of care, but my comments today will focus primarily on the proposed amendments to Bill 119.

The Canadian Nurses Protective Society is a not-forprofit organization created in 1988. It provides professional liability protection and legal support services to nurse practitioners and registered nurses throughout Canada. While we provide assistance and legal representation in legal proceedings, our assistance primarily focuses on prevention. Our comments today will focus on the implications of the proposed amendments for nurse practitioners and registered nurses, but some may apply as well to other health care professionals.

As a preliminary comment, there is no doubt that the legislative scheme that governs the management of personal health information serves an important purpose. Citizens of Ontario should have confidence that their private health information is protected when they receive care. This includes implementing means to prevent, identify and respond to privacy breaches in a transparent way.

At the same time, access to health information is a critical requirement of the provision of quality of care. It is therefore equally important that the rules in place to prevent unauthorized access to health information do not impair the ability of health care professionals to provide care in accordance with applicable standards.

To that end, I will invite the committee today to consider the potential implication of the legislation for care providers who are entirely respectful of patients' privacy interests, and specifically consider whether the changes to the draft legislation may have unintended consequences for these nurses and their patients. The comment will focus on two kinds of possible unintended consequences: firstly on the quality of care and secondly on legal implications for registered nurses and nurse practitioners.

With respect to the impact on the quality of care, our comments will focus on the proposed wording of subsections 17(1) and 17(2), which set out when agents or employees of the custodian can use personal health information. Because nurses are often employees, their ability to collect, use and disclose personal health

information is most often governed by the provisions that apply to agents.

Under subsection 17(2), the right of agents to collect, use and disclose information is predicated on the custodian's permission to do so, and whether it is necessary for the purpose of carrying out the agent's duty.

As you can see, the requirement for permission is set out in subsection 17(1), and subsection 17(2) speaks to the necessity of the use of the information.

Making access, use and disclosure conditional upon the employer's permission implies that the custodian has ultimately exclusive rights, obligations and authority with respect to personal health information. However, nurses have independent legal obligations in respect of information that apply irrespective of the context in which they provide care and irrespective of whether they are agents or custodians of personal information.

We believe that it is important to recognize expressly in the Personal Health Information Protection Act that these legal obligations exist and that they supersede any decisions that the employer may make with respect to the collection, use and disclosure of health care information.

There is a brief reference to the existence of competing obligations, pursuant to other legislation, in the current subsection 17(2), but this was removed in the proposed amendments. What you see right now before you is the language that exists currently in subsection 17(2).

The other condition for the collection, use and disclosure of information is the requirement for necessity. This is a new criterion to determine when a health care provider can collect, use and disclose information. "Necessity" is problematic because it can have different meanings. As stipulated in Black's Law Dictionary, "it is a word susceptible of various meanings. It may import absolute physical necessity or inevitability, or it may import that which is only convenient, useful, appropriate, suitable, proper, or conducive to the end sought."

Our submission, therefore, is that the word "necessary" is required to be better defined if it is to be used in this legislation.

In the context of subsections 17(1) and 17(2), it is difficult to know which meaning is intended. Giving it the meaning of absolute necessity could bring registered nurses and nurse practitioners to question their right to collect and use personal health information, even in ordinary circumstances.

Our recommendations are summarized in the following two slides, for ease of reference. Since the members of the committee have them in a document, I will not repeat them at this time, so I can proceed to my next point.

The next consideration that I would like to bring to your attention is whether there exists a potential for nurses to be unfairly accused of inappropriate access to information or, as we've most commonly used, "snooping." It is important to consider the reality that nurses face in the management of personal health information.

Let's use the example of electronic records. In order to access electronic records, nurses must use an authentication mechanism. When they access records without making an entry, there is no clue left as to the reason why they might have accessed the records. The EHR does not typically contain a field to indicate why the record was accessed.

There can be many reasons to access personal health information that are legitimate, other than the direct provision of care. Some are contemplated in section 37 of the Personal Health Information Protection Act.

At some point, there can be an audit. We understand that if a nurse accesses records of patients to whom she did not provide direct care, a determination regarding the appropriateness of access must then be made on the basis of inferences. These inferences are then usually validated through an inquiry with the nurse, who may then have nothing but her memory to rely upon.

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There are other questions that can come into play at this point. For instance, did the nurse access the record with the permission of the employer? In that case, are we looking at an implied permission or at an expressed permission? There is also a variable understanding, we have noted, of the concept of a circle of care. In some organizations, it is interpreted as a very narrow concept, whereas it is broader in other interpretations.

Then there's the question of who bears the burden of proof during the course of that particular inquiry as to whether access was authorized or not. In the absence of conclusive evidence, will there be a conclusion that the access wasn't authorized and was inappropriate because the nurse cannot herself justify the access? Or will it be concluded that there's no conclusive evidence that there was inappropriate access, and therefore the conclusion will be that this is not an instance of inappropriate access? How will the balance play out?

Then, if, on the basis of what is sometimes very imperfect information, the custodian concludes that there has been a breach, there is an obligation to notify the individuals who have been determined to have been the victims of unauthorized access. Section 12 can be the subject of interpretation. As you can see, the obligation occurs if the information is stolen, lost or used or disclosed without authority. What does the term "without authority" mean in that specific provision? Does it mean without legal authority, which means contrary to the application of the act, or does it mean that it wasn't authorized expressly by the employer?

To this, the proposed amendments add two new provisions: a reporting obligation to the regulator and a complete removal of the limitation period—

Le Président (M. Shafiq Qaadri): Merci, madame Léonard, pour vos remarques introductoires. Maintenant, je passe la parole à M^{me} Scott. Vous avez trois minutes. Three minutes.

Ms. Laurie Scott: Actually, I'm totally fine with allowing you to finish, if you want to, for the next three minutes. Is that okay?

Ms. Chantal Léonard: Thank you very much.

Ms. Laurie Scott: Are you okay with that, Mr. Chair? The Chair (Mr. Shafiq Qaadri): Sure. Your time is yours here.

Ms. Chantal Léonard: To this, the proposed amendments add two new provisions: a reporting obligation to the regulator, which then will lead to another investigation; and, very importantly, a complete removal of the limitation period. This means that when nurses have to answer questions regarding access further to an audit, if this legislation is adopted, there may not be any limit on how far back this will go, when they will have to rely on their memory.

Furthermore, since 2011, there is a new cause of action. Patients can now commence litigation to obtain financial compensation for inappropriate access. We have seen that this has resulted in class actions. In the context of those class actions, employers often take the position that they're not responsible when it comes to an employee breach. As a matter of fact, the employees themselves, individually, have to look for representation to defend those class actions.

PHIPA is an important piece of legislation. It must encompass all the necessary principles of fairness to ensure that its application creates a fair result in all circumstances. We believe that some small amendments and clarifications to the proposed legislative amendments that take into account the current reality of nurses and nurse practitioners would avoid that, if the legislation is adopted, it would cast a wider net than intended.

The Chair (Mr. Shafiq Qaadri): Thank you. Any further questions, Ms. Scott? You still have a minute.

Ms. Laurie Scott: I didn't look at the back of your slide deck here, but is there an actual example—I can think of one that comes to mind. A nurse who was in emerg one day is in ICU the next day. She goes to access the file to see where the patient was because she was in emerg and now she's working ICU, but the patient is not in ICU. You can use that example or you can give me another example of an incident. I think that will help clarify what you're saying.

Ms. Chantal Léonard: Nurses who work in the emergency room, for example, may be called upon to make inquiries with respect to patients who are in different areas of the hospital, not only in the emergency room. But the emergency room tends to be a hub, and so sometimes a physician may call and ask a nurse to look at the record of a patient to see if a lab result has come in so that they can prescribe the right medication. That would be an example of a circumstance where a nurse could be called upon.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Scott.

Ms. Laurie Scott: Okay. Thank you. That was good. The Chair (Mr. Shafiq Qaadri): The floor goes to the NDP. Madame Gélinas?

M^{me} France Gélinas: It was a very good example. I'm sorry I came in late. I had House duty to comply with. We are faced with health practitioners, nurses—we'll take the example; you make up the biggest mass—who want us to get the balance right, as well as a number of families who have had bad outcomes with them—we'll take our hospital system—and who are trying to gain access to information or who have had their private information breached. From what I've tried to scan through your PowerPoint, you feel that we haven't got the right balance there.

In the suggestions that you are making, it's really suggestions that would protect nurses more. How do you balance that with families who need closure?

Ms. Chantal Léonard: I'm not sure that I would agree with your characterization that the proposed changes are intended to protect nurses more than they do patients. We understand that there is a need to intervene when there's inappropriate access. The changes that we're proposing intend to avoid that nurses who have inappropriately accessed information could be trapped in an investigation and an inappropriate finding of inappropriate access be made as a result.

M^{me} France Gélinas: So you feel that the way we have it now would open the doors to things like this, where you went into the chart because it was part of your job—because a question was asked and this is where you find the answer—and the bill, the way it is written, would look at this as being inappropriate?

Ms. Chantal Léonard: The bill itself is not necessarily the problem. It's the ability to implement the bill in the current reality that is the issue. What we're proposing is that this reality needs to be taken into account in determining how the bill is structured.

M^{me} France Gélinas: Is this specific to electronic charts, or all charts?

Ms. Chantal Léonard: Certainly more in respect of electronic charts, because this is where audits are conducted and decisions have to be made on the basis of inferences. For instance, if there was the ability when accessing a chart to indicate why it was accessed, then maybe there would be no need for the nurse to rely on their memory to try to explain it later on.

M^{me} France Gélinas: I see. And none of that exists— Le Président (M. Shafiq Qaadri): Merci, Madame Gélinas. To the government side: Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I want to thank you for coming in today and speaking to us on behalf of the Canadian Nurses Protective Society.

I appreciate your presentation and the concerns that you're raising. I realize that you're here to make sure that you are a voice for nurses when it comes to, perhaps, some situations that could be complicated and could need some legal counsel and advice. I understand that you play a very important role when it comes to our nurses, so I want to thank you for coming in, and of course, drawing our attention to certain things.

I just want to go over the intent of this and make sure that we're all speaking about the same thing. The intention of Bill 19 is to strengthen the protection of health information privacy and increase transparency and accountability. It's also about creating a strong foundation, which is what the bill intends to do: a strong foundation for securing—for secure sharing, also, of a patient's personal health information in the electronic health records system.

What we're trying to do is create a province-wide system that allows health records to be shared between health care providers and yet still protect the rights of individuals. I'm sure that, in your role, you realize this is complicated and tricky.

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I want to talk to you a little bit about QCIPA and the QCIPA legislation. From your experience in supporting investigations and nurses out there and so on, can you tell me how important and critical this legislation will be in preventing critical incidents going forward? Remember, we're here trying to strengthen things and ensure that the backing is there.

Ms. Chantal Léonard: Nurses, as a group, support the protection of personal health information. We're approaching this from the same page. The purpose of the submissions is to identify a few areas where some small adjustments may be necessary to reflect the obligations that nurses have—in reference to that information, but also in reference to their patient—to ensure that, as they protect the personal health information, they can continue to provide the best care they can and follow their standards of practice.

With respect to the quality of care: That legislation serves a specific purpose. The purpose of that legislation is to ensure that if there has been an adverse event, there can be, shortly after that event, a safe forum where nurses and other health care providers can discuss the incident—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris.

Merci beaucoup, madame Léonard, pour votre présence et votre députation.

REGISTERED NURSES' ASSOCIATION OF ONTARIO

The Chair (Mr. Shafiq Qaadri): It's my pleasure to ask our next presenters to please come forward: the Registered Nurses' Association of Ontario—Ms. Baumann and your colleague Mr. Lenartowych. Welcome. You've seen the drill. The floor is yours. Please begin.

Mr. Tim Lenartowych: My name is Tim Lenartowych. I'm the director of policy for the Registered Nurses' Association of Ontario. I'm very pleased to be joined by my colleague Andrea Baumann, who is a nursing policy analyst.

RNAO is the professional association that represents registered nurses, nurse practitioners and nursing students in Ontario. As the largest regulated health workforce, registered nurses and nurse practitioners are deeply affected by Bill 119, which is why we're here today and welcome the opportunity to provide input.

I'll refer you to our detailed written submission, and our remarks today will be a highlight of that submission. I'll begin with some comments on schedule 1 of the bill, and my colleague will take over for schedule 2.

In terms of schedule 1: RNAO is supportive of many of the proposed amendments to the Personal Health Information Protection Act proposed in schedule 1 of the bill. This will move us one step closer to having a provincial electronic health record, as real-time access to key health information at the point of care means health professionals will be able to provide more coordinated, person-centred care with less duplication of service.

Whenever personal health information is collected, stored and accessed, security and confidentiality are of paramount importance. Section 1(2) of the bill amends the definition of "use" of personal health information to include viewing. We're aware of several cases where health professionals made unauthorized access to view health records. Although these situations have been isolated, Ontarians deserve to have their personal health information protected; thus, we are in favour of proceeding with greater regulation around the viewing of personal health information.

In the event of a privacy breach by means of the electronic health record, the proposed amendments stipulate that the prescribed organization must notify the health information custodian that originally provided the personal health information. RNAO recommends that a requirement be included that the patient whose personal health information was involved must also be notified in a timely manner—and to specify who will be making that notification.

In regard to the provisions around the duty to report to regulatory colleges, RNAO is a strong supporter of Ontario's current self-regulatory system of health professionals under the Regulated Health Professions Act. The sustainability of this model demands strong public trust and the accountability of regulators. Section 8 of Bill 119 mandates that health information custodians must notify regulatory colleges if an employee is terminated, suspended or subject to disciplinary action related to personal health information, or if the employee resigns and there are grounds to believe that the resignation is in relation to an investigation or other action with respect to personal health information.

While RNAO fully believes that health professionals must be accountable for their use of personal health information, we believe that the current reporting requirements under the Health Professions Procedural Code under the RHPA are sufficient, and we question the necessity of section 8(3) of the bill. We recommend that it be removed at this time to allow for further discussion with stakeholders.

In addition, section 23(8) of the bill would remove a six-month limitation period specified by the Provincial Offences Act on the prosecution of offences related to personal health information. In the interest of procedural fairness, we recommend that the government specify an appropriate limitation period on the prosecution of offences under section 23(8) of no more than five years after which the offence was alleged to have occurred.

In terms of the provisions in the bill that speak to an advisory committee—section 55.11—the minister is to establish an advisory committee for the purpose of making recommendations regarding the practices of the prescribed organization. RNAO supports this recommendation, and we further urge to mandate the advisory committee composition to include at least one registered nurse and one nurse practitioner, in addition to other health professionals and a member of the public. This is given the trust that the public places in nurses as well as our knowledge and experience in health service delivery.

Lastly, the bill creates significant implications for health care professionals in regard to personal health information. We want to ensure that health care professionals are going to be aware of their obligations under this bill should it become law. We want to ensure that there will be follow-up education and outreach, and we encourage the government to engage professional associations like RNAO to ensure that nurses and other health care professionals are fully aware of their obligations and what the law says to minimize the likelihood of incidents where there would be inadvertent breaches.

Andrea?

Ms. Andrea Baumann: Thanks, Tim.

On to schedule 2: RNAO applauds the efforts to update the Quality of Care Information Protection Act and is supportive of processes that give health facilities the opportunity to review critical incidents so that they can improve quality of care. RNAO strongly believes that the need for confidentiality during the review process must be balanced with the need for transparency for patients, their families and staff, all of whom deserve to know about the quality of care that was provided.

Currently, there's a lack of consistency as to how QCIPA is applied when reviewing critical incidents. The newly added preamble to QCIPA, 2015 does well to clarify the spirit and intent of the legislation. However, further clarity is required, and we would like to see it defined in terms of the parameters that identify the circumstances under which QCIPA may be applied. This will ensure that critical incidents are reviewed in a consistent manner and that information is not unnecessarily withheld from patients, families or the public in the name of quality improvement.

Regarding definitions in section 2: Following a critical incident, it is understandable that patients and families want to know what happened. RNAO is strongly in favour of measures to increase transparency, as was said. That's why RNAO supports the added definition of "quality of care functions" as well as the revised definition of "quality of care information" to help clarify what information can be withheld under QCIPA.

RNAO applauds new additions to QCIPA, 2015 that facilitate the sharing of quality of care information between health facilities. As the next step, RNAO urges the health ministry to work with stakeholders to put forward policy options to support the sharing of quality-of-care information among health care organizations for maximal benefit. Further, we urge this section of the legislation to be strengthened to facilitate sharing of

quality-of-care information, not only with other quality-of-care committees but also with the public by establishing a publicly available database, as recommended by the QCIPA Review Committee.

In addition to the need for transparent processes for reviewing critical incidents, there is also a need to balance this with appropriate protections for health professionals who are involved in critical incidents. In the absence of appropriate confidentiality, health professionals may be hesitant to speak openly about the causes of critical incidents. This would also hinder their ability to learn from them. That's why RNAO is supportive of sections 10 and 11, which provide assurance of non-retaliation for employees who have disclosed information to a quality-of-care committee.

However, RNAO is concerned that the above protection only exists when QCIPA is applied. It is our view that the same level of protection must be assured when reviewing all critical incidents, both when QCIPA is applied and when it is not, to enable clinicians to discuss critical incidents openly and without fear of repercussions. RNAO believes that this is a necessary step in order to combat a culture of blame and move towards a just culture. This culture shift should exist at all levels as we work together in the provision of safe, quality health care.

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In addition, we are in agreement with the QCIPA Review Committee's recommendation to provide support for staff involved in critical incidents, as this can be a difficult experience.

Again, back to the point of education for health professionals, this time with regard to QCIPA implementation: Because of the broad implications, RNAO would like to see necessary training and guidance for all health professionals, including RNs and NPs, to understand this new legislation and to implement necessary changes to their practice. The government has committed to consulting with stakeholders on this issue. Given the central role that RNs and NPs play in our health system, we urge the government to consult RNAO on the issue of QCIPA implementation.

Thank you for giving us this opportunity to present our perspectives on Bill 119. We believe that the practical and achievable recommendations that we have outlined will strengthen the bill and advance health service delivery to ensure that it is of high quality, transparent and respectful of appropriate privacy and confidentiality. We urge you to implement our recommendations and we look forward to answering your questions.

The Chair (Mr. Shafiq Qaadri): Thank you. Just before I offer the floor to the NDP, I just wanted to say that the protocol here is that cellphones are generally seized and often sold back to either the bidder or to the highest bidder, and it goes into general revenues. I just invite you to please shut down the cellphones.

Madame Gélinas, you have the floor.

M^{me} France Gélinas: Thank you so much for your presentation. I always appreciate RNAO's positions on different pieces of legislation.

I want to concentrate on the second part to start, because the time goes by really quickly. I want to make sure that I understand. The protections that you're seeking are the protections for the workers, so that, if they bring forward something from a critical incident, whether it be within QCIPA or outside of it, they're not going to lose their jobs about it. But you are not asking that this information be shielded from families who want to gain closure on that same incident.

Ms. Andrea Baumann: That's right. I think what we're seeking is a balance between the need for protection for workers, such as nurses and nurse practitioners, who are involved in a critical incident—what we heard from members as we consulted on this issue was just how onerous the process can be. If people are afraid of losing their jobs, they may not speak openly and then we might not learn the most we can from this critical incident. But of course, we want to balance that with the right of patients and their family members to access information and, like you said, to achieve closure.

We spoke out in favour of some of those changes to regulation 965 under the Public Hospitals Act, whereby things like the facts of the incident and the cause would not be withheld.

Mr. Tim Lenartowych: I think that we actually were involved in speaking out. There were a number of highprofile cases within the media where families were left wondering, "What happened? What happened to my family member?" This was very concerning to nurses, because we do believe that we're very privileged to have a public health system. It's owned by the people of Ontario, and they deserve to know what happened.

We think that Bill 119, with the revised definitions under the QCIPA component, will provide Ontarians with more answers. For example, it specifies that the cause is not to be shielded. However, Andrea mentioned balancing it with protection for nurses and other health care professionals so that if they speak out truly in terms of what they thought the cause of it was, there won't be ramifications from an employment or a regulatory perspective.

M^{me} France Gélinas: Are you able to articulate in black and white where you set the trigger to trigger QCIPA versus not? I was trying to read really quickly. Did you do this? Did I miss it, or is it work to be done?

Mr. Tim Lenartowych: We've identified it as a need. In terms of specific language, that's still work that we would need to do.

M^{me} France Gélinas: All right. But you're cognizant that people want closure, that they need to have access. Do you have any proof or evidence that the fact that there is a safe place to talk has led to improvement—

Le Président (M. Shafiq Qaadri): Merci beaucoup, madame Gélinas. Maintenant, je passe la parole à M^{me} Naidoo-Harris. Trois minutes.

Ms. Indira Naidoo-Harris: Thank you so much for coming in and presenting on behalf of the RNAO. I of course want you to know that we value very much the work that our nurses do in the province, and all of us here

understand that our nurses are a lifeline to wellness and good, quality health care. Please take that message back from all of us here in government about how much the work is appreciated.

I was especially interested in some of the things that you were saying involving balance and the importance of balancing transparency with patients' rights. Certainly, it enlightened us on some of the challenges, perhaps, that nurses may face when they are dealing with some of these situations.

You talked about PHIPA, and I'd like to go into that a little bit. PHIPA, as we all know, is moving us, I think, one step closer to provincial electronic health records. Real-time access to key health information when it comes to health care providers when they're dealing with crisis situations, I would think, as someone from the outside looking in, has to be imperative and vital to the system.

Can you tell me how this bill improves that and ensures the delivery of better and more quality health care from the perspective of nurses, who are there on the front lines?

Mr. Tim Lenartowych: I think, from our perspective, what you said is exactly right. It's about that balance. As the health system evolves and we're looking at greater care coordination and aiming to have a seamless transition of care across sectors, the sharing of information and electronic modes of communication, I think, are going to be an absolutely critical enabler of that.

I think that what you need to have is a statute that can balance the need to share and have ready access to information while, at the same time, ensuring that there are, of course, appropriate protections and appropriate fairness for health care professionals.

Some of the areas where we have a little bit of concern: We believe that the public trust in nurses is very strong, and we want to maintain that. Nurses need to be accountable, 100%. They need to be accountable for all of their actions but, at the same time, I think there needs to be a level of fairness for nurses.

For example, the limitation period: to specify an unlimited limitation period and having a nurse trying to recall from memory a situation that happened 22 years ago I think is going to be difficult. I understand that the current limitation period of six months would be very problematic in terms of trying to actually proceed with a prosecution, but we're not in support of having an unlimited limitation period.

Ms. Indira Naidoo-Harris: Thank you for your comments on that. I also appreciated the comments you made about education and training being a part of delivering this process accurately.

I don't know how much time I have, Chair.

The Chair (Mr. Shafiq Qaadri): You have 2.5 seconds.

Ms. Indira Naidoo-Harris: I was going to ask—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. To the PC side: Mr. Yurek.

Mr. Jeff Yurek: Thank you, Chair. Thank you very much for coming in today. Just a couple of questions,

taking off from the third party: Do you have any proof—she was asking this—that the small, safe discussions that take place actually do improve the health care system?

Mr. Tim Lenartowych: What I can give you are the discussions and the feedback that we received from our members who are involved in these discussions. Yes, what we've heard from them is that it does provide an opportunity to look at processes within organizations to understand what went wrong.

But I think that there's a tremendous opportunity here for organizations to learn from each other. I think that a good analogy is the airline industry. When there's some sort of a critical incident within the airline industry, all the other airlines are wanting to understand what happened so they can prevent that incident from happening. Currently, you can't share information between quality-of-care committees among organizations.

With Bill 119, it would enable the opportunity for that sharing of information. But we would want to see it actually taken one step further and following through on the QCIPA advisory committee's recommendation to have that publicly available database for a few reasons, the first being that we do feel that having a publicly available database that has appropriate confidentialities in place so that we're not disclosing personal health information would actually improve quality of care within hospitals, and also, it will allow for sharing.

Hospitals and other health care organizations—I've largely been saying "hospitals," but understanding that QCIPA would apply to other health organizations. They're publicly owned organizations, and the public has a right to know about the quality of care within those organizations. Just like we're reporting on a number of metrics within our publicly funded health organizations, I think that having this information publicly available would be of great advantage.

Mr. Jeff Yurek: How much time?

The Chair (Mr. Shafiq Qaadri): A minute.

Mr. Jeff Yurek: Oh, lots of time.

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My other question is with regard to ensuring there's non-retaliation from the employers. Where do you feel the college falls into the place about involving the college with incidents—what's the balance?

Mr. Tim Lenartowych: I think that the appropriate protection would need to extend both for implications for employment and also for the regulatory perspective. We fully want nurses to be accountable. They need to be accountable. Having a self-regulatory system in Ontario is a privilege. We want to maintain that privilege, and in order to do so, we need to have public trust within that system.

That being said, we also know that when you have a blame culture within organizations, nurses can be afraid to speak up and—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Lenartowych and Ms. Baumann, for your deputation on behalf of the RNAO.

ONTARIO MEDICAL ASSOCIATION

The Chair (Mr. Shafiq Qaadri): We now invite our next presenters to please come forward: Dr. Chris and Ms. Laxer of the Ontario Medical Association.

Welcome. Your time begins now.

Dr. Stephen Chris: Mr. Chairman and members of the committee, my name is Stephen Chris. I've been a comprehensive care family doctor for most of my working life, though more recently I'm focused on long-term care. I'm also board chair of the Ontario Medical Association. With me today is Dara Laxer, acting director of health policy for the OMA.

On behalf of Ontario's doctors, I would like to begin by thanking the committee for the opportunity to be here today—and to continue to lend our voice to this important discussion about the development of a functional and safe electronic health records system for the province.

We see the electronic health record, the EHR, as the overarching framework and foundation which captures the patient's entire health record. This entire record contains relevant information extracted from multiple sites, which includes records from physicians, hospitals, labs and others. The EMR, the electronic medical record, is only one component of the EHR. The EMR, you will remember, is what doctors collect in their offices.

A properly designed e-health system is a fundamental requirement for patient care in the 21st century. We view this system as essential to the delivery of care. Having the most accurate, up-to-date information available at the point of care will improve the care experience and the quality of care tremendously. The OMA believes that a functional and secure e-health system is an important component of health system reform and sustainability.

My comments today will focus on two aspects of Bill 119: the governance structure we need to put in place for a transparent and robust implementation of an HER; and a warning about the government's interest in gaining access to patients' full charts, which identifies patients as individuals. We also have several concerns that are technical in nature, and these concerns are explained in detail within our written response.

The legislative framework to enable the creation of an e-health system is important, and we must get it right. In order to get it right, those who develop the framework and oversee its implementation must understand how the health care system functions. No one can do that in isolation. Diverse expertise is required to develop solutions that work for patients. The government cannot and should not go at this alone.

Bill 119 proposes to strike an advisory committee to advise the minister. The government often speaks about the importance of inclusivity and transparency; e-health is an area where these attributes are much needed. Ontario has, quite frankly, not enjoyed a lot of success in its e-health endeavours to date. If we collaborate to understand what the system needs through a shared decision-making process, then we will have greater success. The proposed approach to have a committee that is merely advisory to the minister is inadequate to meet

the significant challenges ahead. We need to work together on this.

The government has a tendency to engage physicians and other health care providers only at the implementation stage, when bad decisions have already been taken, millions of dollars have been spent or committed, and political face-saving drives further bad decision-making. The diabetes registry is a good example of this.

The OMA urges the government to take the opportunity to amend Bill 119, to introduce shared governance for the EHR and its management. The experience in Alberta demonstrates that this approach works. It provides a framework for good decision-making and generates much-needed buy-in from the key stakeholders, who create and use the information on behalf of patients.

Good governance calls for a skills-based oversight body that brings together all of the key perspectives. Physicians, hospitals, pharmacists, technology specialists, patients and system planners need to come together to hammer out solutions to the challenging problems that we will inevitably encounter as we move forward with a comprehensive e-strategy. That is very different than bringing a group of people together to give advice that the government is free to accept, reject or ignore.

One of the most successful aspects of our current e-health system sits in physicians' offices. Some 85% of community-based physicians now use electronic medical records. When physicians are engaged in strategy development and implementation, the results are positive and we get the desired outcomes.

I'll now turn to my second key area: government access to personal health information.

The OMA is very concerned about the provision within section 55.9 of Bill 119 that will allow the Minister of Health and Long-Term Care to collect all identifiable patient health information, including the most intimate details of each individual's life, captured in physician notes. Patients share their life stories with physicians, with the understanding that their health information will not be shared beyond the circle of care and that the most personal details will not be shared at all

At present, the government does not have direct access to patients' personal health information for system planning. During the three years of consultation on this bill, the OMA has yet to hear an explanation as to why the government wants to change public expectations of privacy. While patients expect health care providers to share information to improve their health care, they most certainly do not expect the government of Ontario to be looking at their most private information.

We urge this committee to recommend amendments to Bill 119 to prevent the government from having access to non-anonymized personal health information for system planning purposes.

Just recently, in 2014, England's National Health Service sought to develop a central repository of data, much like what is proposed in Bill 119. Due to concerns around patient privacy, and mismanagement, and after many millions of pounds were spent, this initiative failed. We must learn from this significant mistake that was made not even two years ago. We must make sure this does not happen in Ontario.

As I previously said, physicians want a system that is supported by an integrated and well-functioning e-health system, and we support the intent behind Bill 119. I urge you to make the amendments that will give physicians, other health care providers and the public the confidence they need to move forward with government. We continue to be willing to spend whatever time is needed to ensure that these recommendations are understood by you, as lawmakers.

We represent Ontario's doctors. We understand our patients and their needs, and we use the technology in our offices every day. We want to share this knowledge with you. We continue to offer our support in working together to create an e-health system that works for the people of Ontario. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Dr. Chris. I'll pass to the government side. Ms. Naidoo-Harris, three minutes.

Ms. Indira Naidoo-Harris: Thank you so much for coming in.

Dr. Stephen Chris: Thank you for having us.

Ms. Indira Naidoo-Harris: We very much appreciate the presentation by the Ontario Medical Association. Yes, absolutely, this is about partnerships and working together to improve the health care system that we have in this province, and to make sure that it is leading our province and our country in terms of the delivery of good care. So I want to thank you for coming in.

I also appreciate very much the comments that you were making about the importance of electronic health records. I think it's important to note that since 2005-06—at that time, there were 770,000 Ontarians benefiting from EMRs. Today, it's a fantastic story, because we have more than 10 million people who are benefiting from it. I think no one understands the importance of these electronic health care records more than doctors.

I am very interested in the comments you were making about governance and also access to chart info. I'm going to start with the governance piece. Certainly, it seems that you recognize the importance of the role of an advisory committee or something like that, but you feel that there should be a movement toward shared decision-making

I have to tell you, I'm a bit concerned about this, about the challenges a system like that may propose and may put on the table. Who would be there? Who would be giving access to decision-making when it comes to Ontario's patients and their health care records? Do you agree that this is something we may have to approach with caution?

Dr. Stephen Chris: Yes. I think the whole core of my presentation was about caution in designing a system that will work, that will provide patients—patients will have their information available when it's needed, at an

appropriate place and time—and to make sure that it's

only at that appropriate place and time.

Building e-health systems seems very complicated in many places, and not just in Ontario. There are considerable problems in building e-health systems. It is only with meaningful input from those of us who use the systems and know what we need—and we know what patients need—that we can get to where we want to go.

I think the element of shared decision-making is

crucial.

Ms. Indira Naidoo-Harris: I also understand your comments about access to chart information and how we monitor that and how we regulate that. My concern would also be about regulation, because unless you really know what you're looking for, we may not actually be able to say, "All of this info, but not this info." I'm assuming that there is a little bit of balance needed here, and perhaps that is why this legislation is being proposed the way it is.

Dr. Stephen Chris: Without repeating everything— The Chair (Mr. Shafiq Qaadri): Thank you, Ms.

Naidoo-Harris. The floor passes to Mr. Yurek.

Mr. Jeff Yurek: Thank you for coming in today. It's interesting that it was brought up from the governing party there, about figuring out what needs to be involved in regulation at the beginning. You made the point that you'd like to be part of a partnership at the start of going through and developing this bill into regulations and into law. Unfortunately, it will probably be at the implementation phase, and that's where you usually run into problems. Probably why eHealth has cost over \$2 billion and we're still not fully functional in this province is mainly that health care professionals haven't been at the forefront throughout the whole process.

Do you have any hopes at all of actually being part of the shared governance and going from step A to B with this government, or do you figure you'll be at the bottom

of the list again?

Dr. Stephen Chris: Hope springs eternal. I think it would be in all our interests to ensure that all the stakeholders who have experience and should have input are in fact involved as the decisions are made. That's the way to avoid expensive, time-consuming mistakes, to get where we all want to go.

Mr. Jeff Yurek: So you're vouching for OMA—that if the government comes around and wants to work with doctors again and the OMA, you're more than willing to

step forward—

Dr. Stephen Chris: We've demonstrated that. The most successful part of e-health in Ontario, as has already been said, is the fact that EMRSs, electronic medical records systems, sit on the desks of 85% of doctors in Ontario. That's because we were involved in that. We operate that program. It's because of that—our involvement, and positive involvement—that we have made this huge progress over the last five to 10 years.

Mr. Jeff Yurek: So working with doctors is key to

ensuring the system—

Dr. Stephen Chris: Absolutely.

Mr. Jeff Yurek: Great. My other point with regard to the government collecting data: Do you think that will inhibit people with certain conditions? I'd bring out mental health; there's a huge stigma involved. Do you think that might shun away people from actually accessing the help and services they need?

Dr. Stephen Chris: I don't know about accessing health care services. My concern is that if patients believe—if people believe—that what they tell their doctor ends up on the desk of someone in government, they won't tell us. Everything about medical care, going back to Hippocrates, is about the trust between patients and physicians. There is a risk that that trust could be seriously damaged, with an effect on patient care in the province.

Mr. Jeff Yurek: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yurek. Madame Gélinas?

M^{me} France Gélinas: My questions are along the same two lines of everybody else. The first one is a shared governance model based on a skills-based oversight body that has decision-making authority. What does the government tell you? Why do they feel that an advisory body is what they want, when we have this model in Alberta that already works? What have they told you?

Dr. Stephen Chris: I'm not sure I know exactly what they have told us. My speculation is that there is always the concern on the part of government that if a mistake is made they bear the blame, and so if you keep control you may be more likely to be successful, but I think that's not the right answer.

Dara, do you want to add something?

Ms. Dara Laxer: Yes. There is a lack of clarity in the responses provided about why the body needs to be advisory in nature. In conversations we've had, it has been indicated that groups like the OMA will likely sit on such an advisory group, which is good to know, but we need these details articulated clearly in the legislation.

In addition, "advisory" is not sufficient. We need collaboration and shared decision-making. If this process that we've been through, where we've tried to provide our advice, is any indication of what an advisory body

might be, we're a little concerned.

M^{me} France Gélinas: Yes, you can be ignored, and you were. My second question also has to do with what the government does tell you. Why do they need to have those identifiers? I have no problem with them collecting data to improve patient health and all this, but why the identifier? Did they ever explain to you why?

Dr. Stephen Chris: I'm not aware of the answer to

that question.

Ms. Dara Laxer: The answer to that is no, we haven't received a clear answer in terms of why. It has been indicated that it might make processes simpler because now what happens is that much of this work is done by other prescribed entities such as the Institute for Clinical Evaluative Sciences, so it might be simpler for the government to do that work in-house, but that doesn't clearly

answer the question about why the government needs access to all of Ontarians' personal health information.

M^{me} France Gélinas: Do you know of any other jurisdictions that have given themselves the right to gather that information?

Dr. Stephen Chris: I certainly don't know of any jurisdiction where they do that.

Ms. Dara Laxer: No, and we spoke of England and what did not end up working because of the concerns

over patient privacy.

M^{me} France Gélinas: It has failed royally in England, and we're following down this path. Am I the only clair-voyant one who sees failure in the future? I hope I'm wrong. Thank you for your presentation. It is much appreciated.

Dr. Stephen Chris: Thank you.

Ms. Dara Laxer: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Gélinas, and thanks to you, colleagues from the Ontario Medical Association.

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I will now invite our next presenter to please come forward. Mr. Beamish of the Office of the Information and Privacy Commissioner of Ontario. Mr. Beamish, I think you are well aware of the drill here.

Mr. Brian Beamish: I am. Thank you very much.

The Chair (Mr. Shafiq Qaadri): I'd like you to please begin now.

Mr. Brian Beamish: Good afternoon. Mr. Chair and members of the committee, thank you for the opportunity to speak to you today. I am here primarily to express my support to the amendments in Bill 119 to the Personal Health Information Protection Act, PHIPA, in schedule 1 of the bill. It was developed in close consultation with my office. My staff worked very hard on this and we're satisfied that it presents the necessary framework to support a shared provincial electronic health record network in the province.

We have three amendments. One is a minor amendment to schedule 1; the other two relate to schedule 2, QCIPA. You have that, along with agreed wording. Rather than use my time to explain why I support the bill, I thought my time might be better spent to address some of the issues that have been brought to your attention today and to give you my comments on them.

The first one relates to our first recommended amendment to QCIPA and involves the role of my office, the Information and Privacy Commission, in the quality-of-care discussion. I should underline that we do not have oversight over QCIPA. If you read QCIPA, you will see no mention of the Information and Privacy Commission. Where we do get involved is in the issue of: Is particular information quality-of-care information?

Let me give you a typical scenario to explain that. An individual dies in hospital. Their family, quite understandably, would like to get information about the death, about the care provided and the circumstances of the death. They have the ability to put in an access-to-information request under FIPPA, the Freedom of Information and Protection of Privacy Act, or under PHIPA. That's not a request put in under QCIPA; It's put in under FIPPA or PHIPA.

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The hospital has to respond to that and hopefully provide records and information, but they may deny access to some information on the basis that it's quality-of-care information. There is a prohibition on the hospital disclosing that information.

That family then has a right to come to my office and file an appeal under FIPPA or PHIPA. We have a tribunal process that will determine whether they have received access to the information that they have a right to. That may involve us analyzing whether the records withheld by the hospital really have been properly characterized as quality-of-care information. In order to do that, our experience is that we need to see the records. It's impossible for us to provide a sound decision on whether particular records have been properly categorized and labelled as quality of care unless we see them.

As the QCIPA is currently worded and as schedule 2 is currently worded, the hospital would be in a position to say to us, "We cannot disclose those records to you." There is a prohibition on disclosing QCIPA records. There are exceptions to that, but one of those exceptions is not providing that information to the Information and Privacy Commission.

Our main recommendation to you is to clarify in the legislation that hospitals are able to provide quality-of-care information to us so that we can perform our duties and functions under FIPPA and PHIPA.

I know that this morning there was some discussion about this and I think the Ontario Hospital Association indicated that we would be bringing this forward. I don't want to misspeak or mischaracterize the comments that were made but I thought I heard the suggestion that our processes at the IPC were too informal to be entrusted with decisions around quality of care. I really would like to dispel that notion. We handle over 1,400 freedom-of-information requests in the course of a year. We handle requests of patients for their information under PHIPA. Our process is not informal. All of those requests and appeals to our office would go through mediation. We have trained mediators, professional mediators; they're guided by the law. They perform their duties professionally.

If something isn't mediated, it goes to an adjudicator. We have very strict rules on how adjudicators handle information and handle appeals. We have rigour to the process. They provide the parties with an opportunity to present their case and then they follow the law in making a decision. So I would like to dispel the notion that we somehow cannot handle this.

I would also note that this is a much easier process than requiring an individual to go to the courts. The family in the example I gave you does not have to be represented when they come to us. They don't need a lawyer. We'll give them a quicker and cheaper answer rather than requiring them to go to the courts.

The other comment on this issue that I thought I heard was that quality-of-care information is of a quality and of a sensitivity that somehow it wouldn't be proper or safe to entrust it to our tribunal. Again, I'd like to really dispel that notion. Just as the nature of our job, we handle sensitive information. We handle personal health information; we handle sensitive law enforcement information; we handle cabinet records; we handle records related to national security. We're fully aware of our responsibility to ensure the security and safety of records that are given to us.

Let me move on to another issue that has been raised a couple of times, and that is around breach reporting. You'll know that currently there is no requirement in FIPPA to report breaches to my office. It does happen; custodians do come to us to self-report, but that's discretionary. They have no obligation to do that, so we're fully supportive of a breach notification being built into the law. You will know, though, that breach notification will be subject to parameters that are put in place by regulation. We're fully supportive of that as well. We understand that there is a spectrum of breaches in terms of seriousness. We don't want to put a burden on custodians to have to report every breach, nor do we want to handle every trivial breach.

We've already worked on what kind of criteria would go into a regulation to set the parameters on when breaches should be reported to us. Those parameters could be put in legislation. I wouldn't have any objection to that. I think my preference, though, is to leave the bill the way it is and have that description left to regulation. I think that provides more flexibility. If we don't get it right in terms of what the threshold is for reporting, it strikes me that it's easier to adjust the threshold if it's in regulation, rather than having to introduce another bill to change that.

There was also some discussion around reporting to colleges, and the sense that any reporting under PHIPA to regulatory colleges should mirror the reporting that's currently in place. I guess my view on that is, when I look at the current reporting to colleges that's required, it looks to me like a pretty high threshold. It does talk about professional misconduct. I think if we were to have PHIPA mirror that, we would be relying on custodians to interpret breaches of PHIPA as professional misconduct.

I can tell you, from our experience, that it's not uncommon for us to deal with a health care organization, like a hospital, which may have found that a staff member was engaged in unauthorized access or snooping and has terminated the employment of that individual. When we ask, "Have you reported to the regulatory college?", the answer is, "No."

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Brian Beamish: That tells me that there is a disconnect between what their view of professional misconduct is and breaches to the act.

My recommendation would be to leave the legislation as it is and, if an individual is subject to discipline for a breach of the act, that there is a duty to report to the college.

I'll leave it at that and take your questions.

The Chair (Mr. Shafiq Qaadri): Thank you very much, Mr. Beamish. We pass to the PC side: Mr. Yurek.

Mr. Jeff Yurek: Thank you for coming out, Mr. Beamish. We appreciate your comments and your suggestions, and we'll take a good, close look at them.

As privacy commissioner, do you have comment on what the OMA brought forward, the fact that personal identifiers will be linked and allow the government to access? What's your view on that aspect?

Mr. Brian Beamish: Well, I do. I think it's a mischaracterization to suggest that the result of PHIPA will be a database of identifiable patient information that's available to bureaucrats. I can tell you that if that was the result of it, my comments here to you today would be entirely different.

The act does allow for the ministry to collect personally identifiable information, but there are some pretty strict safeguards placed on that. It has to be collected by a designated unit; the activities of the ministry in the unit—the policies and procedures of that—have to be approved by my office; and that unit must immediately de-identify the information.

I'm confident that our office has the kinds of oversight we need to ensure that the scenario you heard described by the OMA will not come to fruition.

I think we recognize that the ministry has a legitimate need to get information for planning, for funding and for detecting fraud. We recognize that. But there are safeguards in the bill to ensure that that's done in a responsible way, that our office has oversight of that process, and that you aren't creating a massive database of personally identifiable information.

Mr. Jeff Yurek: So you can confidently, 100% guarantee that none of that data would be used—

Mr. Brian Beamish: I guarantee nothing 100%.

Mr. Jeff Yurek: Okay. That's a concern we raised, that that data will be available and accessible. I totally respect your office and your abilities, but human nature is human nature, at the end of the day. That's a concern on our part, going forward, that we'll take a look at.

Again, thank you for your presentation.

Mr. Brian Beamish: Okay. Thank you.

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The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yurek. Ms. Gélinas.

M^{me} France Gélinas: I know that you've spent a lot of time on this, and I appreciate your office's work to bring us to where we are. Let's say your recommendations don't go through, but we vote for the bill. How confident are you that if Mr. Ford were to go into the

hospital and 200 people accessed his record, there would be consequences?

Mr. Brian Beamish: I guess what I would say is that I'm pretty confident that if someone like Mr. Ford goes back in the hospital, inevitably, somebody's going to look. Our experience is that despite all the training, despite all the policies, despite people being disciplined and reported to colleges, inevitably, it happens.

I think this bill, though, gives more tools to send a message that it's not okay. For example, lifting the limitation period for prosecutions: I was listening to the conversation earlier this afternoon. The likely scenario is not that someone's going to be found having snooped eight years ago; our experience is that someone is found to have done it now, and when an audit is done of their access to the system, there can be a trail going back years that they have been engaged in this kind of activity. The six-month limitation period means that anything beyond six months cannot be used for prosecution purposes. In my view, that trail of activity should be something that is brought to the attention of a judge to indicate a pattern of behaviour. So I think that's an important piece of this.

I also think that doubling the fines—it's unlikely that someone's going to get a \$100,000 fine for this kind of action, but it sends a signal. It says, "This is serious activity. You shouldn't be engaged in it, and if you are, there will be consequences."

The important piece of this is that people know that they will be detected, and if they're detected, there will be serious consequences.

M^{me} France Gélinas: If we look at the other piece, how confident are you that families who are trying to gain closure will actually have more valid information to gain closure?

Mr. Brian Beamish: I would say that with the amendment we've proposed, I'm confident that people will get the information that the law allows them to get.

M^{me} France Gélinas: That's if your amendment gets through?

Mr. Brian Beamish: If my amendment is not accepted, I would not be confident of that because, in effect, people would be left in the position of having to take the hospital's word that it's quality-of-care information.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Gélinas. I'll pass it now to the government side, to Mr. Anderson. Go ahead.

Mr. Granville Anderson: Thank you, Mr. Beamish, for your presentation here today. I know that the IPC was heavily engaged in this process throughout the development of the legislation. I would like to thank you for the time and commitment that you have taken to do this.

As you know, Bill 119 creates an advisory committee to make recommendations to the minister on privacy matters in the future. What do you think about the establishment of the advisory committee? I know you were here and you heard the OMA's position on it, so could you elaborate?

Mr. Brian Beamish: I think the creation of an advisory committee is admirable. I guess the question is, then, who populates the advisory committee, and the bill is silent on that. I suppose we'll have to wait to see who the ministry determines should be part of that committee.

I'm assuming they will have a wide range of stakeholders from the health care community and the community at large. That would make sense to me.

Mr. Granville Anderson: Okay. You alluded to the fact that the six-month limitation has been removed. That does help your office to have stricter controls over privacy matters. Please expand on how that would help.

Mr. Brian Beamish: The law currently allows for prosecution of individuals for wilful violation of the act, but the charges have to be brought within six months of the violation. The typical snooping case: As I mentioned, either there's a pattern that goes beyond six months and those instances cannot be part of the charges, which may limit the advisability of a charge or the ability to prove wilfulness, or the unauthorized access initially occurs outside of the six-month period.

Our view is that lifting the limitation period will allow greater scope for prosecutions. And I'm not talking about prosecutions in every case; I'm talking about prosecutions where there is true wilfulness—very, very serious cases. I think that that can send a signal to the community that this is serious behaviour to be engaged in.

I do think lifting the limitation period will really assist in that. I've heard the suggestion that it should be two years or it should be five years. I suppose at some point, you're picking a number. My preference would be not to have one and leave it at that.

Mr. Granville Anderson: Do I have more time? The Chair (Mr. Shafiq Qaadri): Thirteen seconds.

Mr. Granville Anderson: I know earlier, you alluded to the fact that you couldn't guarantee absolutes, that there couldn't breaches down the road to—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Anderson, and thanks to you, Mr. Beamish, for your deputation.

Just for the information of committee members, the deadline for submissions is 6 p.m. on March 10, Thursday; amendment deadline: 6 p.m. on Monday, March 21. We will be meeting for clause-by-clause on Thursday, March 24, after the break.

If there's no further business or there any questions? Ms. Scott.

Ms. Laurie Scott: Roughly, what time will Hansard be ready? Will that be next week sometime? Do you think that's the possibility when Hansard might be happening, or is it two weeks? We just didn't know with those deadlines, which aren't bad.

The Chair (Mr. Shafiq Qaadri): Hansard, when are your literary works going to be ready?

The Clerk of the Committee (Mr. Christopher Tyrell): Next week at some point.

The Chair (Mr. Shafiq Qaadri): Next week.

Ms. Laurie Scott: Next week? Okay. I think we're good with that. Thank you.

The Chair (Mr. Shafiq Qaadri): Any further questions? Yes, Madame Gélinas.

M^{me} France Gélinas: How many people do we have for deputants next week?

The Chair (Mr. Shafiq Qaadri): We're done.

M^{me} France Gélinas: We don't have any more depu-

The Chair (Mr. Shafiq Qaadri): We have no deputa-

M^{me} France Gélinas: Do we still have time, if people want to come?

The Chair (Mr. Shafiq Qaadri): I do not think so. I think the deadline has passed. Of course, we can accept written submissions until 6 p.m. next Thursday.

M^{me} France Gélinas: I thought we still had another day next Thursday.

The Chair (Mr. Shafiq Qaadri): We did, but there were no deputations to fill it—

M^{me} France Gélinas: —that came in in time.

The Chair (Mr. Shafiq Qaadri): In any case, the committee is adjourned. Thank you.

The committee adjourned at 1517.

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First Session, 41st Parliament

Official Report of Debates (Hansard)

Thursday 24 March 2016

Standing Committee on Justice Policy

Health Information Protection Act, 2016

Assemblée législative de l'Ontario

Première session, 41^e législature

Journal des débats (Hansard)

Jeudi 24 mars 2016

Comité permanent de la justice

Loi de 2016 sur la protection des renseignements sur la santé

Chair: Shafiq Qaadri Clerk: Christopher Tyrell Président : Shafiq Qaadri Greffier : Christopher Tyrell



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 24 March 2016

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 24 mars 2016

The committee met at 0901 in committee room 1.

HEALTH INFORMATION PROTECTION ACT, 2016

LOI DE 2016 SUR LA PROTECTION DES RENSEIGNEMENTS SUR LA SANTÉ

Consideration of the following bill:

Bill 119, An Act to amend the Personal Health Information Protection Act, 2004, to make certain related amendments and to repeal and replace the Quality of Care Information Protection Act, 2004 / Projet de loi 119, Loi visant à modifier la Loi de 2004 sur la protection des renseignements personnels sur la santé, à apporter certaines modifications connexes et à abroger et à remplacer la Loi de 2004 sur la protection des renseignements sur la qualité des soins.

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. As you know, we are here to consider clause-by-clause amendments for Bill 119, An Act to amend the Personal Health Information Protection Act, 2004, to make certain related amendments and to repeal and replace the Quality of Care Information Protection Act, 2004.

We have a number of amendments and also a late submission by the NDP which we will entertain later; that's, I think, 18.3. We now offer the floor, unless there are any general comments, to the PC side for motion 0.1.

Mr. Randy Hillier: I just have some general comments.

The Chair (Mr. Shafiq Qaadri): Actually, just before we move on that, with the will of the committee, we need to proceed directly to the schedules, which is schedule 1, and we'll stand down sections 1, 2 and 3 for consideration, which we'll return to after.

Mr. Randy Hillier: Why are we standing down?

The Chair (Mr. Shafiq Qaadri): I think, presumably, because there are no amendments offered so far.

Mr. Randy Hillier: Okay.

The Chair (Mr. Shafiq Qaadri): I take it that's the will of the committee? General comments before we invite the actual motion?

Mr. Randy Hillier: Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Go ahead, Mr. Hillier.

Mr. Randy Hillier: Yes. I just want to point out that there are a substantial number of amendments offered up by all parties—none more so than the government—on this bill. I think, as we've heard from some delegations, that the government might want to reconsider this bill and withdraw it and spend some time and actually get the bill right instead of inundating the committee with a substantial number of amendments. They obviously proceeded far too quickly and in haste in drafting this bill.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Are there any further comments before we proceed to consideration of the motions, clause-by-clause? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I feel that we are ready to proceed. I just want to point out that this is part of the process. Going through the entire bill and looking at the various pieces and making suggestions is part of the process to ensure that we are moving forward with what we want to. We're very happy with what we're doing.

The Chair (Mr. Shafiq Qaadri): We'll now proceed, as mentioned, to the consideration of item 4, schedule 1, for which we have a PC motion labelled as 0.1. Mr. Hillier.

Mr. Randy Hillier: Thank you. I'll just read out the motion; then I'll have my colleague add some comments to it.

I move that section 1 of schedule 1 to the bill be amended by adding the following subsection:

"(4.1) Section 12 of the act is amended by adding the following subsection:

"Prescribed organizations

"(5) Subsections (2), (3) and (4) apply with necessary modifications to prescribed organizations."

The Chair (Mr. Shafiq Qaadri): Mr. Yurek?

Mr. Jeff Yurek: We brought this motion forward out of a concern from the Ontario Medical Association, which wanted to ensure that the doctors and providers aren't exactly going to be the ones who have to notify patients of breaches that they had no involvement in and to ensure that only the health information custodians will have the responsibility to notify.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yurek. Any further comments? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Yes, Chair. We really feel that this motion is not necessary because this is about making sure that the process is streamlined and that it

works efficiently. We feel that the advisory committee is already going to be dealing with things on an individual basis and will be making recommendations to the minister about specific notice requirements. It's all about streamlining it and making sure the process is efficient. We feel that it's not necessary to move in this direction.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. Any further comments before we proceed to the vote? Mr. Hillier.

Mr. Randy Hillier: Let me just get this clear: If there is a breach of information, under the way the bill is presently structured, there is not clarity that other people who were not involved with the breach may also have a responsibility to inform people of a breach that they were not involved with and may not have any information on, and the government members think that is a streamlined method.

The Chair (Mr. Shafiq Qaadri): Ms. Naidoo-Harris? Ms. Indira Naidoo-Harris: Chair, I just want to point out that the health information custodians are already required to notify individuals and the IPC of privacy breaches for non-EHR systems on their premises. That's already in place—

Mr. Randy Hillier: Could you move the microphone a little bit closer? I can't hear you at all.

Ms. Indira Naidoo-Harris: Sure. That system is already in place, and notifications will be happening.

Mr. Randy Hillier: I couldn't hear anything there.

The Chair (Mr. Shafiq Qaadri): Ms. Naidoo-Harris, can I ask you to repeat your remarks?

Ms. Indira Naidoo-Harris: Oh, sorry. I'm just pointing that health information custodians are already required to notify individuals and the IPC of privacy breaches for non-EHR systems on their premises.

The advisory committee will be asked to make recommendations to the minister about specific notice requirements in the rare circumstances of a privacy breach within a prescribed organizations. The subjects will be dealt with on an individual basis, and the parameters are there to ensure that this is dealt with appropriately.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas, would you like the floor?

M^{mé} France Gélinas: I will be supporting this motion, for the simple fact that people want clarification in the law, not having to wait and be at the whim of the minister of the day as to whether they will be forced to do things that they know nothing about.

This bill needs a lot of work in order to achieve what the goals are. The goals are good; the bill is not going to bring us there.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Hillier?

Mr. Randy Hillier: Clearly, the bill was done in haste. I understand that there was a time frame by other authorities that the government had to act on this, but it seems that the government is willing and wanting to continue to proceed in haste and create another bill, another piece of legislation, that will just end up in front of the courts once again, and then they'll have to back-

track and backpedal and correct, once again, the mistakes that happened out of haste.

As I said from the outset, the significant numbers of amendments offered up by the government side on this bill clearly demonstrate and are evidence that they had very much difficulty in drafting this bill. Let's not run into the same mistake once again.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. Naidoo-Harris?

Ms. Indira Naidoo-Harris: Yes, Chair. I believe that we're discussing motion 0.1 right now and we're moving forward with the discussion of this bill. I just want to make sure that our members opposite are aware that that's what we're discussing. I think it's important that we discuss this motion as it appears before us.

As far as the overall process is concerned, as I mentioned earlier, this is part of the process. We have been consulting with various parties and listening to the members opposite. I think what is before us now in terms of the proposed amendments and so on is a result of those consultations and those conversations. So the government is ready to move forward with the bill in terms of going through the various motions and amendments here today.

The Chair (Mr. Shafiq Qaadri): Mr. Yurek?

Mr. Jeff Yurek: Just further to that comment made by the government side, I think it clearly shows that you didn't partake in consultation until after the bill was drafted and on the table. Otherwise, your amendments would be minimal.

The fact that you said this was through consultation after second reading of the bill obviously shows that there was little involvement with people outside of the bureaucracy in creating this bill.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yurek. Unless there are further comments, we'll proceed to the vote on the PC motion labelled 0.1. We'll proceed to the vote. Those in favour of PC motion 0.1? Those opposed? PC motion 0.1 falls.

We now proceed to consideration of NDP motion 1: Madame Gélinas.

M^{me} France Gélinas: I move that clause 17(2)(a) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(7) of schedule 1 to the bill, be amended by striking out "and" at the end of subclause (ii) and by adding the following subclause:

"(ii.l) is not contrary to this act or another law, and"

The Chair (Mr. Shafiq Qaadri): Comments on NDP motion 1?

M^{me} France Gélinas: Sure. Basically, the motion would require the agent of a health information custodian to collect, use, disclose, retain or dispose of personal information in a manner that is not contrary to this act or another law.

This is a request that comes from the Information and Privacy Commissioner. I will quote from his deputation to us: Bill 119 "does not explicitly require that agents only collect, use and disclose personal health information

where not contrary to the limits imposed by PHIPA or another law....

"Agents ... may include regulated health professionals, health researchers, electronic service providers, health information network providers and other third-party service providers," including "health record storage companies" and "paper shredding companies." It includes both professionals and independent businesses.

The Information and Privacy Commissioner states, "Given the diverse nature of agents of health information custodians, it is recommended that the duty to comply with PHIPA as well as other laws be explicitly imposed on all agents of health information custodians as well as on the health information custodians on whose behalf they may act.

"Further, removing the direct obligation for agents of health information custodians to comply with PHIPA and other laws may weaken the existing accountability framework."

The proposed wording of the amendment was presented to us and, I think, has great value. Information does travel, even if it is in an electronic form. Lots of different companies and businesses will have access to that information. This will make it safer for all of us to share information in a way that we know will remain secure.

The Chair (Mr. Shafiq Qaadri): Any further comments on NDP motion 1? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: We will be rejecting this motion. I want the member opposite to know that we actually agree with the motion but just have concerns about its drafting.

We will be proposing and have submitted motion 2, which essentially has the same effect and intent but, we feel, just provides a clearer approach to legislative numbering. We're hoping that the NDP will agree with us on this

The Chair (Mr. Shafiq Qaadri): Thank you. Any further comments? We will proceed, then—Madame Gélinas.

M^{me} France Gélinas: We are debating this motion right now. This is the language that the Information and Privacy Commissioner asked us to consider. I have read your motion and it is not the same. I cannot support what they're putting forward. This is what the Information and Privacy Commissioner advised us we should bring forward. He has informed this bill extensively, and I think he should be listened to.

The Chair (Mr. Shafiq Qaadri): Madame Naidoo-Harris.

Ms. Indira Naidoo-Harris: I just want to thank the member opposite for her comments. I'm very respectful of what she has to say. I feel, and our side feels, that motion 2 does make it clear that agents, in addition to health information custodians, are required to comply with PHIPA and other laws. We just feel that motion 2 will clarify the situation in terms of numbering. That's our position.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: I just want to be clear here. The government recognizes the value of this motion, they support this motion, but they will vote against it in that their language is clearer and has greater certainty than the language from the Information and Privacy Commissioner. I just want to get this clear: that the staffers on the Liberal side don't have much regard—or the government doesn't have much regard—for the competency of the Information and Privacy Commissioner.

The Chair (Mr. Shafiq Qaadri): Are there any further comments? Otherwise, we'll proceed to the vote for NDP motion 1. Those in favour of NDP motion 1? Those opposed to NDP motion 1? I declare NDP motion 1 to have lost.

We now proceed to government motion 2. Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I move that subsection 17(2) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(7) of schedule 1 to the bill, be struck out and the following substituted:

"Restriction, collection, use, etc. by agents

"(2) Subject to any exception that may be prescribed, an agent of a health information custodian may collect, use, disclose, retain or dispose of personal health information only if,

"(a) the collection, use, disclosure, retention or disposal of the information, as the case may be,

"(i) is permitted by the custodian in accordance with subsection (1),

"(ii) is necessary for the purpose of carrying out his or her duties as agent of the custodian,

"(iii) is not contrary to this act or another law, and

"(iv) complies with any conditions or restrictions that the custodian has imposed under subsection (1.1); and

"(b) the prescribed requirements, if any, are met." I apologize for the way I read the numbering.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. Apology accepted. Are there any further comments on government motion 2? Madame Gélinas.

M^{me} France Gélinas: I really don't understand why we want to introduce into this bill "Subject to any exception that may be prescribed." Whenever you have a bill like this, that is already very, let's say, poorly written, and has gaping holes in it that will end up in front of the courts because people don't agree with the way that you say the bill wants to do something—and I want to get there with you, but this is not what you have written down. Then, to make matters worse, you introduce language such as "subject to any exception that may be prescribed" in regulation. That takes away any reassurance that the law will be there to protect our personal information when regulations can be done that nobody will know about, or very few will know about.

This is not what the Information and Privacy Commissioner said was needed in order to protect the personal information of Ontarians. I don't know why you are doing this, but you are going in the opposite direction of your stated goal when you bring motions like this forward.

0920

The Chair (Mr. Shafiq Qaadri): Mr. Hillier, then Ms. Naidoo-Harris.

Mr. Randy Hillier: I think I have the answer for you, Madame Gélinas. That is: They don't know what they're doing, and they're hoping that sometime down the road they can find someone who knows what they're doing about this bill. That's why they're leaving it all up to regulations.

For anyone to argue that the first government motion, motion 2, provides greater certainty, clarity and efficacy than NDP motion 1—read those two. Put those two motions in front of you and take a look. Truly, tell me which one provides greater certainty and clarity. It is not the government motion. When you have to take 200 words instead of 25 words to try to explain what it is that you're doing, you're adding needless complication and confusion into the bill.

My assertion is that they're leaving this to be defined later because they don't know what they're doing today.

The Chair (Mr. Shafiq Qaadri): Ms. Naidoo-Harris? Ms. Indira Naidoo-Harris: Yes, Chair. I just want to point out that, basically, the only change is number (iii), which is worded, "is not contrary to this act or another law, and;" What this motion does is essentially clarify that agents can only collect, use or disclose personal health information if it is not contrary to this act or another law. My understanding is that the Information and Privacy Commissioner has been consulted on this and feels this is appropriate.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas?

M^{me} France Gélinas: You're right about what you just said, but you skipped the beginning, which is, "Subject to any exception that may be prescribed...." If you're willing to take that part out and then make it that this is in law, that it is not contrary to an act in another law, then I would say you're getting closer to what the Information and Privacy Commissioner said. But as long as you keep "Subject to any exception that may be prescribed"—as long as you open this wide door to do whatever you want in regulations, then it's all for none.

The Chair (Mr. Shafiq Qaadri): Ms. Naidoo-Harris? Ms. Indira Naidoo-Harris: Chair and the member opposite: I just want to draw your attention to the fact that the only thing that we're changing in the previous motion 1 that the NDP moved forward—the numbering was (ii.1). What we've done is just changed that numbering to (iii). That's all we've done in this; that's the only change.

The Chair (Mr. Shafiq Qaadri): Are there further comments on government motion 2 before we proceed to the vote?

Mr. Rinaldi, I take it you're hailing a supporter and not asking for comment time?

Mr. Lou Rinaldi: No comment.

The Chair (Mr. Shafiq Qaadri): All right. We'll proceed to the vote on government motion 2. Those in favour of government motion 2? Those opposed? Government motion 2 carries.

We'll proceed now to NDP motion 3. Madame Gélinas?

M^{me} France Gélinas: I move that subsections 17.1(2) and (3) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(8) of schedule 1 to the bill, be struck out and the following substituted:

"Termination, suspension, etc. of employed members

"(2) Subject to any exceptions and additional requirements, if any, that are prescribed, if a health information custodian employs a health care practitioner who is a member of a college, the health information custodian shall give a written report of any of the following events to the college within 30 days of the event occurring, setting out the reasons for the termination, suspension or disciplinary action and the grounds upon which the health information custodian's belief is based or the nature of the allegations being investigated, as the case may be:

"1. The employee is terminated, suspended or subject to disciplinary action as a result of the unauthorized collection, use, disclosure, retention or disposal of

personal health information by the employee.

"2. The employee resigns or restricts his or her practice and the health information custodian has reasonable grounds to believe that the resignation or restriction is related to the unauthorized collection, use, disclosure, retention or disposal of personal health information by the employee or takes place during the course of, or as a result of, an investigation conducted by or on behalf of the health information custodian into allegations related to the unauthorized collection, use, disclosure, retention or disposal of personal health information by the employee.

"Member's privileges revoked, etc.

"(3) Subject to any exceptions and additional requirements, if any, that are prescribed, if a health information custodian offers privileges to or associates in a partnership, a health profession corporation or otherwise with a health care practitioner who is a member of a college, the custodian shall give a written report of any of the following events to the college within 30 days of the event occurring, setting out the reasons for the revocation, suspension, restriction, dissolution or relinquishment and the grounds upon which the health information custodian's belief is based or the nature of the allegations being investigated, as the case may be:

"1. The member's privileges are revoked, suspended or restricted, or his or her association is dissolved or restricted, as a result of the unauthorized collection, use, disclosure, retention or disposal of personal health

information by the member.

"2. The member voluntarily relinquishes or restricts his or her privileges or practice, and the health information custodian has reasonable grounds to believe that the relinquishment or restriction is related to the unauthorized collection, use, disclosure, retention or disposal of personal health information by the member or takes place during the course of, or as a result of, an investigation conducted by or on behalf of the health information

custodian into allegations related to the unauthorized collection, use, disclosure, retention or disposal of personal health information by the member."

The Chair (Mr. Shafiq Qaadri): Further comments? Madame Gélinas?

M^{me} France Gélinas: For me, this adds clarity to the proposed subsection 17 by adopting refined language that was brought to us by CPSO. CPSO states, and I agree, that these refinements are needed to ensure consistency with parallel provisions in other statutes. "The College of Physicians and Surgeons of Ontario welcomes the new provision requiring reporting to the college of privacy breaches by practitioners. However, the college suggests that the language be made consistent with the mandatory reporting provision already in the Health Professions Procedural Code of the RHPA—that is, in section 85.5—and in section 33 of the Public Hospitals Act to avoid confusion and inconsistency as to when reporting is provided."

We already have, in the Health Professions Procedural Code of the RHPA and in the hospitals act, language that is in line with—I would say, identical to—the language I have just read into the record. Rather than introducing new language in Bill 119, let's bring consistency to this very important provision of the bill.

The Chair (Mr. Shafiq Qaadri): Yes, Madame Naidoo-Harris?

Ms. Indira Naidoo-Harris: Thank you, Chair, and thank you to the member opposite. I do realize that the member opposite seems to feel that this is just refining the language, but I have to point out that these are privacy breaches that this particular section refers to, not professional misconduct. I think that this calls for a specific set of guidelines. What the member opposite is proposing is really going to just insert more red tape into the process, and I think it's really very important that we try to streamline things as much as possible. We just don't feel that, when it comes to privacy breaches, it warrants this level of minute detail. We feel that this motion will just make things more unwieldy.

The Chair (Mr. Shafiq Qaadri): Further comments on NDP motion 3? Madame Gélinas and then Mr. Hillier and then Mr. Yurek.

M^{me} France Gélinas: Go ahead.

The Chair (Mr. Shafiq Qaadri): Mr. Yurek or Mr. Hillier?

Mr. Jeff Yurek: Go ahead.

Mr. Randy Hillier: Everybody wants to get in, but we're all being so polite.

If I heard this correctly, the government finds that privacy breaches are nothing that should be overly detailed, and there is no sense in defining or clarifying such an important thing as a privacy breach with any certainty.

It's pretty astonishing, seeing that the whole bill is intended to correct and to prevent breaches of privacy. Once again, we hear them arguing against themselves and arguing against their own bills. It appears that

another episode of the Clone Wars has descended upon the committee.

The Chair (Mr. Shafiq Qaadri): Thank you. Madame Naidoo-Harris?

Ms. Indira Naidoo-Harris: I just wanted to point out that employees actually have a number of tools at their disposal. They may rely on a variety of HR measures that they can use, if the situation warrants.

We feel that this motion would really make it harder for individuals to be held to account in the event of a privacy breach. By trying to match the words of the RHPA, this motion would set out a high threshold for reporting, which would make things unwieldy and slow things down.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments on NDP motion number 3? Madame Gélinas.

M^{me} France Gélinas: I have such a hard time sitting here and hearing language where you refer to privacy breaches as "minute details."

Let me tell you: For people who have their personal health information and privacy breached, it changes their lives. It changes the way that they interact with the health care system forever. It breaks this necessary relationship of trust in order for care to take place.

What the colleges are asking is very reasonable. We have language already. What you're doing with this bill is making money for lawyers who will be in front of the courts arguing that one set of rules has precedence over another set of rules. The loser in this will always be the same person: the person who did nothing wrong but had his personal information broadcast on the front page of the Toronto Star.

This is wrong. You know that it's wrong. You want to do the right thing, but your bill is not doing this. You have to be willing to look at the fact that there are good ideas outside of the Liberal Party. You have to be willing to listen, especially when it comes to something as fundamental as the trust that needs to be there in order for quality care to take place. You are missing the boat.

The Chair (Mr. Shafiq Qaadri): Thank you. Madame Naidoo-Harris?

Ms. Indira Naidoo-Harris: Chair, I just want to make sure that I am setting the record straight: Under no circumstances did I refer to privacy breaches as "minute details."

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Yurek?

Mr. Jeff Yurek: What I did hear from the other side—and thank goodness for the colleges that are in place whose mandate is to protect the public and for their ideas coming forward—is that a privacy breach isn't professional misconduct. I would challenge the government on that side that as a health care professional, if I was to breach any sort of privacy, that would be professional misconduct. I think that we need to listen to the colleges. Perhaps it goes back to the fact that this government failed to properly consult with the regulatory colleges before bring this bill forward, and I think that's a mistake.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yurek. Any further comments before we proceed to a vote on NDP motion number 3? Seeing none, we proceed to the vote.

Those in favour of NDP motion number 3? Those opposed to NDP motion number 3? I declare NDP motion number 3 to have been lost.

We now proceed to PC motion 3.1: Mr. Hillier.

Mr. Randy Hillier: Thank you, Chair. I move that subsections 17.1(2), (3) and (4) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(8) of schedule 1 to the bill, be struck out and the following substituted:

"Termination, suspension, etc. of employed members

- "(2) Subject to any exceptions and additional requirements, if any, that are prescribed, if a health information custodian employs a health care practitioner who is a member of a college, the health information custodian shall give written notice of any of the following events to the college within 30 days of the event occurring:
- "1. The employee is terminated, suspended or subject to disciplinary action as a result of the unauthorized collection, use, disclosure, retention or disposal of personal health information by the employee.
- "2. The employee resigns or restricts his or her practice and the health information custodian has reasonable grounds to believe that the resignation or restriction, as the case may be, is related to the unauthorized collection, use, disclosure, retention or disposal of personal health information by the employee.
- "3. The employee resigns or restricts his or her practice and the health information custodian has reasonable grounds to believe that the resignation or restriction, as the case may be, takes place during the course of, or as a result of, an investigation conducted by or on behalf of the custodian into allegations related to the unauthorized collection, use, disclosure, retention or disposal of personal health information by the employee.

"Contents of notice

- "(3) The notice shall set out,
- "(a) the reasons for the termination, suspension or disciplinary action, in the case of an event described in paragraph 1 of subsection (2);
- "(b) the grounds upon which the health information custodian's belief is based, in the case of an event described in paragraph 2 of subsection (2);
- "(c) the nature of the allegations being investigated, in the case of an event described in paragraph 3 of subsection (2); and
- "(d) the other additional matters, if any, that are prescribed.
 - "Member's privileges revoked, etc.
- "(4) Subject to any exceptions and additional requirements, if any, that are prescribed, if a health information custodian offers privileges to, or associates in partnership with, a health profession corporation or a health care practitioner who is a member of a college, the custodian shall give written notice of any of the

following events to the college within 30 days of the event occurring:

- "1. The member's privileges are revoked, suspended or restricted, or his or her association is dissolved or restricted, as a result of the unauthorized collection, use, disclosure, retention or disposal of personal health information by the corporation or the member, as the case may be.
- "2. The member relinquishes or voluntarily restricts his or her privileges or association and the health information custodian has reasonable grounds to believe that the relinquishment or restriction, as the case may be, is related to the unauthorized collection, use, disclosure, retention or disposal of personal health information by the corporation or the member, as the case may be.
- "3. The member relinquishes or voluntarily restricts his or her privileges or association and the health information custodian has reasonable grounds to believe that the relinquishment or restriction, as the case may be, takes place during the course of, or as a result of, an investigation conducted by or on behalf of the custodian into allegations related to the unauthorized collection, use, disclosure, retention or disposal of personal health information by the corporation or the member, as the case may be.

"Contents of notice

- "(5) The notice shall set out,
- "(a) the reasons for the revocation, suspension or restriction, in the case of an event described in paragraph 1 of subsection (4);
- "(b) the grounds upon which the health information custodian's belief is based, in the case of an event described in paragraph 2 of subsection (4);
- "(c) the nature of the allegations being investigated, in the case of an event described in paragraph 3 of subsection (4); and
- "(d) the other additional matters, if any, that are prescribed."

I'll turn that over to my colleague for further comment.

0940

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Yurek.

Mr. Jeff Yurek: Yes, we have brought this motion forward—it is much like motion 3 from the NDP, with a little bit of different language put forward. Considering the government doesn't want to listen to the College of Physicians and Surgeons of Ontario, perhaps we can take a look at this.

The Chair (Mr. Shafiq Qaadri): Thank you. Other—Madame Gélinas.

M^{me} France Gélinas: The NDP and the PCs—we're both trying to set out the requirement of the notice. We're both trying to make sure that when the notices are sent to the college, they will have the reason for the action. They will have the grounds upon which it is to be based. They will have the information needed for the college to do its work.

The way the bill is written now, you could simply send a note that says there's been a breach, and a name, and that will be it. That will be all. The colleges have asked for that information to be included in the bill so that they can do their work. The least we can do is to make sure that the bill gives the tools to the people who will be doing their work-the colleges with all the regulated health professionals-to do their work, and I hope you will support that.

Also, I just want to draw attention to page 4, 17.1(1), the section we're talking about right now. It starts with:

"College' means,

"(a) in the case of a member of health profession regulated under the Regulated Health Professions Act, 1991, a college of the health profession named in schedule 1 to that act, and

"(b) in the case of a member of the Ontario College of Social Workers and Social Service Workers, that

college."

I want to draw everybody's attention to this because. later on in the bill, you will see that we forget about the social workers. So in that section where you have to report a breach to the college, we include all the regulated health professions and the College of Social Workers, which is not under the Regulated Health Professions Act. Later on in the bill, we forget the social workers.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas. Further comments? Madame Naidoo-

Ms. Indira Naidoo-Harris: Thank you to the member opposite for her comments. Again, we feel that this motion would simply make it harder for individuals to be held in the account of a privacy breach. We feel that it sets out a high threshold for reporting professional misconduct. We know that employers may rely on a variety of HR measures and tools, and HIPA ensures that these actions will trigger a notice to the colleges. So we feel that these issues are covered.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas.

M^{me} France Gélinas: To rely on HR tools—have you ever gone into the field and looked at what the HR department looks like at some of our health care providers? They are non-existent. They are the after-job of a secretary who gives appointments to people who call in. You are making this out to be as if everybody who will be affected by this bill has an HR department. That's not true; that's not the case. It does not exist. That's why we have laws that tell people exactly what they have to do and how they have to do this, and not rely on HR departments that don't exist.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments before we proceed to the vote on PC motion 3.1? Seeing none, we'll proceed to the vote, then. Those in favour of PC motion 3.1? Those opposed? I declare PC

motion 3.1 to have lost.

We will proceed now to the government motion labelled as 4R, "R" meaning replacement motion. Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I move that section 17.1 of the Personal Health Information Protection Act, 2004, as set out in subsection 1(8) of schedule 1 to the bill, be amended by adding the following subsections:

"Same, custodian's agent

"(2.1) Subject to any exceptions and additional requirements, if any, that are prescribed, a health information custodian shall give written notice of an event described in subsection (2.2) to a college if,

"(a) the health information custodian is a medical officer of health of a board of health within the meaning

of the Health Protection and Promotion Act; and

"(b) a health care practitioner, who is a member of the college, is employed to provide health care for the board of health and is an agent of the custodian.

"Same

"(2.2) The health information custodian shall give written notice of any of the following events to a college within 30 days of the event occurring:

"1. The agent's employment is terminated or suspended, or the agent is subject to disciplinary action with respect to his or her employment, as a result of his or her unauthorized collection, use, disclosure, retention or disposal of personal health information.

"2. The agent resigns from his or her employment and the health information custodian has reasonable grounds to believe that the resignation is related to an investigation or other action by the custodian with respect to an alleged unauthorized collection, use, disclosure, retention or disposal of personal health information by the agent."

The Chair (Mr. Shafiq Qaadri): Comments on government motion 4R? Ms. Naidoo-Harris, then Mr. Hillier.

Ms. Indira Naidoo-Harris: We are actually moving this forward because we feel this amendment ensures that agents working in these public health units are reported to their college in the same way as agents working in other health care settings—for example, in hospitals where the health information custodian is the employer.

The current provision just requires health information custodians to notify a regulatory agent, if an agent employed by the custodian is—as a result of a privacy breach.

We just feel that this is important.

In some public health units, for example, Chair, the medical officer of health is the health information custodian but is not the employer of the agent whose privacy breach has led to the disciplinary action. In these cases, a municipality—for example, the city of Toronto—is the employer of the agent.

This motion clarifies that the medical officer of health has the notice obligation in respect of its agents who are members of colleges. It just makes a clarification that we feel is necessary.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: If I could also ask for a recorded vote on this one. I just want everybody to be able to demonstrate that regardless of which party offers up an amendment, we can exercise discretion and exercise our judgment and support amendments from all sides—by the PC colleagues. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. We'll proceed to the vote on government motion 4R—recorded vote.

Ayes

Berardinetti, Delaney, Gélinas, Hillier, Martins, Naidoo-Harris, Vernile, Yurek.

The Chair (Mr. Shafiq Qaadri): Government motion 4R carries.

Interruption.

The Chair (Mr. Shafiq Qaadri): That was in celebration.

To the government members: Would they wish to withdraw government motion 4, as I believe it is replaced?

Ms. Indira Naidoo-Harris: Yes.

The Chair (Mr. Shafiq Qaadri): Ms. Naidoo-Harris, are you willing to withdraw government motion 4, as we replaced it?

Ms. Indira Naidoo-Harris: Yes.

The Chair (Mr. Shafiq Qaadri): Government motion 4 is now replaced—removed.

We now go to government motion 5: Ms. Naidoo-Harris.

0950

Ms. Indira Naidoo-Harris: I move that the English version of paragraph 3 of subsection 55.2(2) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(12) of schedule 1 to the bill, be amended by striking out "personal health information accessible by means of the electronic health record" and substituting "personal health information that is accessible by means of the electronic health record".

The Chair (Mr. Shafiq Qaadri): Comments on

government motion 5? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: We just feel that this is a technical motion. It corrects some inconsistent language that's in there. The current phrasing of "personal health information accessible by means of the electronic health record" is inconsistent with other similar provisions in the bill and should actually state "personal health information that is accessible by means of the electronic health record."

We're just ensuring that we are using consistent

The Chair (Mr. Shafiq Qaadri): Comments on government motion 5? If there are no comments on government motion 5, then we'll proceed to the vote. Those in favour of government motion 5? Those opposed? Government motion 5 carries.

We proceed now to government motion 6: Ms. Naidoo-Harris?

Ms. Indira Naidoo-Harris: I move that the English version of paragraph 4 of subsection 55.2(2) of the Personal Health Information Protection Act, 2004, as set

out in subsection 1(12) of schedule 1 to the bill, be amended by striking out "Conducting analysis" at the beginning and substituting "Conduct analyses".

The Chair (Mr. Shafiq Qaadri): Comments on

government motion 6? Ms. Naidoo-Harris?

Ms. Indira Naidoo-Harris: Again, Chair, this is basically a technical motion that corrects a grammatical error. We are striking out "Conducting analysis" at the beginning and substituting a plural phrase, essentially, "Conduct analyses."

The Chair (Mr. Shafiq Qaadri): Further comments?

Madame Gélinas?

M^{me} France Gélinas: Elle aurait dû lire le côté francophone. Il l'avait comme il faut.

Le Président (M. Shafiq Qaadri): S'il vous plaît, répétez.

M^{me} France Gélinas: Elle aurait dû lire le côté francophone. Il l'avait comme il faut.

Le Président (M. Shafiq Qaadri): D'accord. Y a-t-il des réponses?

All right. We'll proceed, then, to the vote. Government motion 6: Those in favour? Those opposed? Government motion 6 carries.

We proceed now to NDP motion 7: Madame Gélinas.

M^{me} France Gélinas: I move that paragraph 11 of section 55.3 of the Personal Health Information Protection Act, 2004, as set out in subsection 1(13) of schedule 1 to the bill, be amended by adding "and each patient to whom the personal health information relates" after "the prescribed organization".

The Chair (Mr. Shafiq Qaadri): Comments on NDP

motion 7?

M^{me} France Gélinas: Basically, this will require that prescribed organizations not only notify the health information custodian if personal health information is lost or stolen, but also notify the patient, the resident, the person, whose health information has been lost or stolen.

The Chair (Mr. Shafiq Qaadri): Comments on NDP

motion 7? Ms. Naidoo-Harris?

Ms. Indira Naidoo-Harris: We will be rejecting this motion. HIPA requires that the prescribed organization notify the IPC of privacy breaches. It already requires that health information custodians notify patients when a breach happens on their own systems. There is an advisory committee that would be asked to make recommendations to the minister. So we really don't feel that this motion is necessary.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier, then Madame Gélinas.

Mr. Randy Hillier: Astonishing. Astonishing—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Madame Gélinas?

Mr. Randy Hillier: No, I'm not even— The Chair (Mr. Shafiq Qaadri): Oh, okay.

Mr. Randy Hillier: That's a pretty solid amendment from the NDP that ensures that not only various agencies who also have statutory responsibilities but the patient or the individual whose privacy that we're talking about ought to be informed if there's information that is lost or

disclosed. The government, by rejecting this amendment, is saying that the individual who is the subject of the breach of privacy is unimportant.

First and foremost, the person who needs to be informed is the person who has direct consequences being imposed by the loss or the breach. It's astonishing—absolutely astonishing—that a Liberal government would suggest that the individual is unimportant, and that as long as some other agency or advisory committee or some other created body is informed, that's all that they need to do. Is there another word for their position than "bloody astonishing"? I don't know it.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas?

M^{me} France Gélinas: We all know that this bill will require a culture shift in our health care system. You're talking about hundreds of thousands of people who need to do a culture shift. There is snooping going on; there is inappropriate looking into patients' files going on. With electronic files, it's easier and easier.

With Rob Ford—God bless his soul—200 breaches by 200 different people who looked into his file. Yet the consequences have been miniscule so far.

If you want change, let the patients know when this happens. I guarantee you that if it happens to you, then it happens to thousands of people. They will be motivated and they will make sure that cultural change happens.

To keep the patients to the discretion of an advisory committee of the minister: Who are we kidding here? If you want this thing to succeed, the patients have to know every time there is lost or stolen information, so that people take those responsibilities seriously. Right now, you can look at—I would say—any of us who are known in our community, and chances are that our records have been looked at.

The Chair (Mr. Shafiq Qaadri): Further comments on—

Mr. Randy Hillier: Mr. Chair?

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Randy Hillier: Recorded vote.

The Chair (Mr. Shafiq Qaadri): Recorded vote.

We'll proceed to consideration of NDP motion number 7; a recorded vote.

Ayes

Gélinas, Hillier, Yurek.

Nays

Berardinetti, Delaney, Martins, Naidoo-Harris, Vernile.

The Chair (Mr. Shafiq Qaadri): I declare NDP motion number 7 to have been lost.

We proceed now to government motion number 8.

Ms. Indira Naidoo-Harris: I move that paragraph 14 of section 55.3 of the Personal Health Information Protection Act, 2004, as set out in subsection 1(13) of schedule 1 to the bill, be amended by adding "On and

after the first anniversary of the day this section comes into force," at the beginning.

The Chair (Mr. Shafiq Qaadri): Comments?

Ms. Indira Naidoo-Harris: Chair, we just feel that this motion clarifies the date by which a prescribed organization must have privacy practices and procedures in place and approved by the IPC. This is all about enabling the prescribed organization to continue its operations while it is developing and finalizing practices and procedures.

1000

The Chair (Mr. Shafiq Qaadri): Thank you. Any further comments? Madame Gélinas.

M^{me} France Gélinas: They all know that this is coming. Royal assent is not going to happen tomorrow morning. Then to give them one more year after all of this before they have to do anything? This is not acceptable. It has to be done now.

Electronic health records are rolling out as we speak. It needs to be regulated. It needs to be legislated. It will be a while yet before this bill comes into account, and to give everybody a year past this is not acceptable.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments on government motion 8 before the vote? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Chair, I just want to point out that the IPC strongly supports this motion.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll proceed to the vote. Those in favour of government motion 8? Those opposed? Government motion 8 carries.

We proceed now to government motion 9: Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I move that the English version of subsection 55.5(4) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(15) of schedule 1 to the bill, be amended by striking out "to use or disclose of personal health information" at the end and substituting "to use or disclose personal health information".

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 9? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Again, Chair, it's a technical motion that corrects a clerical error by striking out "to use or disclose of personal health information" and substituting "to use or disclose personal health information."

The Chair (Mr. Shafiq Qaadri): Further comments before the vote, if any? We'll proceed to the vote. Those in favour of government motion 9? Those opposed? Government motion 9 carries.

Government motion 10: Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I move that subsection 55.5(6) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(15) of schedule 1 to the bill, be struck out and the following substituted:

"Section 12 obligations

"(6) If a health information custodian requests that the prescribed organization transmit personal health information to the custodian by means of the electronic

health record and the prescribed organization transmits the information as requested, the custodian shall comply with the obligations referred to in subsection 12(1) with respect to the transmitted information, regardless of whether the custodian has viewed, handled or otherwise dealt with the information."

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 10? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: This motion just clarifies that a health information custodian does not become responsible until after information has actually been transmitted to them.

The Chair (Mr. Shafiq Qaadri): Thank you. Any comments? Madame Gélinas.

M^{me} France Gélinas: What happened to the other section on security, on notice of loss and on exception? Is this affected by this amendment or not?

The Chair (Mr. Shafiq Qaadri): Thank you. Madame Naidoo-Harris.

Ms. Indira Naidoo-Harris: No, I believe it isn't.

The Chair (Mr. Shafiq Qaadri): Are there any further comments? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Chair, we just feel that this makes sense because a health information custodian does not control the information before it is submitted to them.

The Chair (Mr. Shafiq Qaadri): Thank you. We will proceed, then, to the vote on government motion 10. Those in favour of government motion 10? Those opposed? I declare government motion 10 to have carried.

Government motion 11: Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I move that clause 55.5(7)(b) of the of the Personal Health Information Protection Act, 2004, as set out in subsection 1(15) of schedule 1 to the bill, be struck out and the following substituted:

"(b) if the circumstances surrounding the unauthorized collection meet the prescribed requirements, notify the commissioner of the unauthorized collection."

The Chair (Mr. Shafiq Qaadri): Comments?

Ms. Indira Naidoo-Harris: Another technical motion that makes the conditions for notifying the IPC of an unauthorized collection of personal health information—and we're making it consistent with the conditions for notifying the IPC of unauthorized use of disclosure of personal health information.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas?

M^{me} France Gélinas: I read it in exactly the opposite direction. What we have now is a requirement to notify the commissioner, and what we will have if we pass this amendment is, if the circumstances—then we notify the commissioner. I like it the way it is written right now way better. You are changing the intent and the meaning of this section. You are not just clarifying the words; you're changing them.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Ms. Indira Naidoo-Harris: We just feel that we're making this consistent with the conditions for notifying the IPC of unauthorized use of disclosure of personal health information as set out in section 12(3).

The Chair (Mr. Shafiq Qaadri): Mr. Yurek?

Mr. Jeff Yurek: I'm in agreement with Madame Gélinas. What conditions would be placed in front of someone to not report any breach? I've spoken to many constituents of mine in my riding, and I don't think any one of them would think, if their health information was breached in any way, that the government has a list of conditions which would prevent that from being reported to the commissioner. Can the government offer some explanation?

The Chair (Mr. Shafiq Qaadri): Any further comments before we vote?

Those in favour of government motion 11? Those opposed? Government motion 11 carries.

We proceed now to NDP motion 12: Madame Gélinas. M^{me} France Gélinas: I move that subsections 55.9(2), (3) and (4) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(19) of schedule 1 to the bill, be struck out and the following substituted:

"Practices and procedures

"(2) The minister may only collect personal health information under subsection (1) if

"(a) the Lieutenant Governor in Council has prescribed not more than one unit of the ministry to collect personal health information under subsection (1) on the minister's behalf;

"(b) the prescribed unit of the ministry has put in place

practices and procedures,

"(i) to protect the privacy of the individuals whose personal health information the minister collects, and to maintain the confidentiality of the information, and

"(ii) that are approved by the commissioner; and

"(c) the personal health information is in aggregate and de-identified form.

"Link

"(3) The prescribed unit of the ministry may link the de-identified personal health information collected by the minister under subsection (1) to other de-identified personal health information under the custody and control of the minister."

The Chair (Mr. Shafiq Qaadri): Comments on NDP motion 12?

M^{me} France Gélinas: The way the bill is written right now, people within the Ministry of Health will have a peephole, a view to the personal health information of anybody in Ontario.

1010

Right here, within the tower down the road from here, people at the Ministry of Health that have nothing to do with your circle of care, that are not there to provide care to you, have an open portal to people's personal information with their identification.

This, to me, is not acceptable. There is no reason why people at the Ministry of Health should be able to look at the personal records of any Ontarian.

What this motion does is it makes sure that the information that the ministry has access to is de-identified. They should not have people's identification and their records attached together. This is a gateway to disaster. I guarantee you that Patrick Brown's and Andrea Horwath's records will be looked at through that peephole every second day, and this is wrong. There is no reason why the Minister of Health and the Ministry of Health need to look at people's personal information.

The aggregate? Absolutely. They have a stewardship role. They need to look at the aggregate of Ontarians in many different forms—no problem with this. But personal identifiers? Never.

The Chair (Mr. Shafiq Qaadri): Thank you. Madame Naidoo-Harris.

Ms. Indira Naidoo-Harris: I do understand the member opposite's concerns. I just would like to make sure that people realize the IPC is in support of the government's approach to using information in the EHR.

We're rejecting this because we really feel this motion seeks to limit the way in which the minister and the ministry may use information from the EHR.

What this is about is really allowing governments to be able to collect information after it has been made anonymous to track data; for example, how many people in Ontario smoke, how many people suffer from diabetes, that sort of information. Governments need to be able to track this data for research and in order to move forward with legislation and programs. Being able to be apprised of what's happening when it comes to patients and the various things that they may have, the health challenges they may be dealing with, is important for governments.

Again, I would like to underscore, or emphasize, that this is information that would be made anonymous, and the IPC is in support of this government using this information in this way.

The Chair (Mr. Shafiq Qaadri): Mr. Yurek.

Mr. Jeff Yurek: Just to reply, we do have a note that the privacy commissioner was unable to give us a 100% guarantee that that information would remain anonymous.

But I do have to agree with the NDP. I may even go further: I don't think the ministry should have any access to our personal health information.

You only have to refer back to that Bell has come out with a program, Let's Talk, because there is such a stigma on mental health, and we're actually getting people to start talking about mental health. If a group of people who are stigmatized are thinking now the government will have access to what they discuss with their doctor in their treatment, they're either not going to go to the doctor or they're not going to be truthful with the discussions they have with the doctor, which will probably impede their care and the care of our communities.

I totally agree with the NDP on this issue. We need to ensure that the minister does not have access to our health care information. But if the government is going to push forward and require that, then we do have to ensure that it's de-identified.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas.

M^{me} France Gélinas: The members from the Liberals say what they want to happen, and I support this. I have no problem with the government knowing how many Ontarians smoke, how many Ontarians have COPD, how many Ontarians use cancer detection. We can learn from this. I have no problem.

But this is not what the bill does. The bill does give people within the Ministry of Health unfettered access to personal identification, to your personal file with your name, with your OHIP number, with your age. Andrea Horwath, from Hamilton, and Patrick Brown—they will have access to those records. The danger there is phenomenal.

Your answer is that you want the government to be able to do aggregate data. Yes, but put it in the legislation that they will never be allowed to have the personal identifier. I asked that only information that has been deidentified—we asked the privacy commissioner if that was going to be the case. It is the case. Nobody can guarantee right now, the way that the bill is written, that—if the ministry asks for identifying information about Ontarians, the ministry will get identifying information about Ontarians. This is wrong. You know that it is wrong.

You speak to what should happen. Well, write in the bill what should happen, because right now, there is a disconnect between what you say you want to do and what the bill is doing. The bill is giving carte blanche for people within the minister's office and in the ministry's office to look at your record, at my record, at Andrea's record and at Patrick's record.

The Chair (Mr. Shafiq Qaadri): All right, colleagues. It's officially 10:15, so I'm going to recess this until this afternoon, when we will reconvene at 2 p.m. Thank you.

The committee recessed from 1015 to 1400.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We reconvene, as you know, for clause-by-clause consideration of Bill 119, An Act to amend the Personal Health Information Protection Act, 2004, to make certain related amendments and to repeal and replace the Quality of Care Information Protection Act, 2004. We've already had NDP motion 12 read by Madame Gélinas. We are now in the midst of comments.

I believe Ms. Vernile requested the floor. If she presents herself—

Mr. Arthur Potts: No, she's now subbed off.

The Chair (Mr. Shafiq Qaadri): I see.

In any case, the floor is open on NDP motion number 12. Madame Gélinas.

M^{me} France Gélinas: Before we broke for the pause, the member, Ms. Naidoo-Harris, mentioned that she did not think that the minister and the ministry staff would have access to personal information. I would direct her back to clause 55.9(3), which states, "Where personal health information has been collected by the minister

under subsection (1)," it goes on to: "(a) create a record containing the minimal amount of personal health information necessary for the purpose of de-identifying the information and linking it to other information in the custody or control of the minister; and

"(b) de-identify the personal health information."

Those right there show that in order for the minister to de-identify the information, he has access to information that has identification. Otherwise, we would not need to tell him to de-identify it before he merges it with other information.

This is not acceptable. This creates a huge opening into every single personal health record for all 13.5 million Ontarians.

This is wrong. I know you don't want to do this; you only want the minister to deal with aggregates, and so do I. But the bill does not say that. The bill says that after the minister has the information, he will have to deidentify the personal information. In order to de-identify it—it's because he has identification in the first place.

Nothing good will come of that. It has to be changed.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas. Are there any further comments before—Madame Naidoo-Harris.

Ms. Indira Naidoo-Harris: Yes, thank you, Chair. I just want to clarify and ensure that we're talking about the same thing. It is motion 12 that we're referring to right now, right?

The Chair (Mr. Shafiq Qaadri): Correct.
Ms. Indira Naidoo-Harris: Okay. Thank you.

I just wanted to clarify a couple of things. Basically, what we're talking about are two units that are going to be looked over and seen over quite carefully by the IPC. Under HIPA, access to the identifiable data from the EHR would be limited to two prescribed units under the ministry and not available beyond that.

One unit would be prescribed to receive the EHR data, and its function would be to de-identify it before it is used for system analytics. What that means is that the first group is going to basically ensure that there's no information in the way of persons' names and identifying names and so on in the data. The second unit will be looking at the data for the purposes of detecting, monitoring and preventing fraud.

This information is really important for government. What it essentially does is it ensures that decisions that we make for the future are actually informed decisions. It's important that governments are able to collect this data, and we need to be able to have a way to do this. I think the process that's in place right now, which will be carefully overseen by the IPC, does that. It ensures that there's anonymity and that the information is then readily accessible in terms of how many smokers we have in Ontario, what residents may be living with diabetes and those kinds of things—key information that we need to have access to.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Naidoo-Harris. Any other comments? Madame Gélinas.

M^{me} France Gélinas: So I take it that the Liberals now agree that there will be two units within the Ministry of Health that will have access to data that have identification attached to them. One of those units' jobs will be to look at this data with identification and deidentify it. In order to de-identify, it presumes that the identity is there. So you have this real big gaping hole that allows you to look into anybody's record in Ontario.

The other one will be dealing with fraud.

I just want the record to note that the Liberals think it is fine for the ministry to look at individual patients' records.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: Yes, I'll just add to that. I find it interesting, the justification from the government side for this: that it's important for government to have this information. I think it's important for justice and privacy that persons' health information is not in the hands of and readily accessible by government, even if it's important for government to have it or want it.

The Chair (Mr. Shafiq Qaadri): Are there any further comments before we proceed to the vote on NDP motion 12? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 12? Those opposed? The NDP motion falls.

We now proceed to NDP motion 13: Madame Gélinas. M^{me} France Gélinas: I move that section 55.9 of the Personal Health Information Protection Act, 2004, as set out in subsection 1(19) of schedule 1 to the bill, be struck out.

The Chair (Mr. Shafiq Qaadri): Comments?

M^{me} France Gélinas: Basically, this is a section of the bill that gives the government the right to look into the records of each and every one of us—our most personal information. We'll have two giant microscopes—telescopes—sitting in the Ministry of Health so that they can see each and every one of our records. This is wrong. This section needs to go.

The Chair (Mr. Shafiq Qaadri): Any further comments? Madame Naidoo-Harris.

Ms. Indira Naidoo-Harris: We will not be supporting this. The IPC is in support of the government's approach to using information in the EHR. The ministry's ability to access EHR data—the ministry's privacy protection processes and procedures—would also be subject to the IPC's regular and ongoing oversight and review.

The Chair (Mr. Shafiq Qaadri): If I might just also invite you to aim yourself at your microphone.

Ms. Indira Naidoo-Harris: Oh, sorry.

The Chair (Mr. Shafiq Qaadri): I think there's a lot of background noise over here, so it's hard for us to hear. But in any case, thank you for your comments.

Are there any further comments before we proceed to the vote? Mr. Hillier?

Mr. Randy Hillier: Again, just in complete contradiction to all our understanding and desire to protect personal and private information, this government seems absolutely bent on providing and having personal and

private information being at the disposal of anybody in the bureaucracy. You can't square that circle, that all this information will be available to the bureaucracy on the very bill whose objective is to protect private information.

The arguments coming from the government side on this are completely without foundation. They're empty; they have no merit whatsoever. Again, just because government finds it important to want to have information is not justification for having access to that information.

The Chair (Mr. Shafiq Qaadri): Further comments before we proceed to the vote on NDP motion 13?

Mr. Randy Hillier: Recorded vote.

The Chair (Mr. Shafiq Qaadri): Recorded vote.

Ayes

Gélinas, Hillier, Yurek.

Nays

Berardinetti, Delaney, Martins, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): NDP motion 13 falls.

We are now on the PC motion labelled as 13.1. Mr. Hillier.

Mr. Randy Hillier: I move that subsection 1(19) of schedule 1 to the bill be struck out.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. I inform you that that particular motion, PC motion 13.1, is out of order as it is exactly the same as the previously defeated motion. We now proceed—

Mr. Randy Hillier: I agree.

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The Chair (Mr. Shafiq Qaadri): I commend you on your agreement.

We now proceed to PC motion 13.2. Mr. Hillier?

Mr. Randy Hillier: I move that subsection 55.11(1) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(21) of schedule 1 to the bill, be amended by striking out "an advisory committee" in the portion before clause (a) and substituting "a multidisciplinary advisory committee".

The Chair (Mr. Shafiq Qaadri): Further comments on PC motion 13.2? Mr. Yurek.

Mr. Jeff Yurek: We feel it's important, in listening to the consultations that came before committee, to ensure we have a multidisciplinary advisory committee that can raise issues from various aspects of the health care sector to ensure that any changes or direction that the ministry may be headed in is hearing from all sides of the story, so we don't need to come back and repeatedly fix things when consultation is not done at the correct level.

The Chair (Mr. Shafiq Qaadri): Any further comments? Madame Gélinas.

M^{me} France Gélinas: I will support the motion. An interdisciplinary, multidisciplinary advisory committee is

the way to go when you're dealing with health care matters.

The Chair (Mr. Shafiq Qaadri): Further comments? Madame Naidoo-Harris.

Ms. Indira Naidoo-Harris: The government feels that "multidisciplinary" is vague and undefined and that the committee will, by its very nature, be multidisciplinary. Members will represent, we feel, a broad spectrum of health system stakeholders who will be involved. It's important that we create a body that can be flexible and allow us to have the right people at the table.

The Chair (Mr. Shafiq Qaadri): Any further comments before we proceed to the vote on PC motion 13.2? Mr. Hillier.

Mr. Randy Hillier: We're going to have to replay some of these arguments. The government wants to be flexible, so they don't want to have a multidisciplinary advisory committee struck. They want to have that latitude and freedom.

As the member said, they're going to consult. This advisory committee will have a number of different groups that will comprise this advisory committee. But they're too fearful to actually state that in the legislation. They're saying that they're going to have multiple disciplines in the advisory committee, but we won't put it in law.

I know that when government acts, they act where they have to and how the legislation compels them to. If it doesn't say "a multidisciplinary committee," then there is no obligation to do so. If the government members are being forthright about their arguments, then they would have no hesitation to put their arguments into law.

The Chair (Mr. Shafiq Qaadri): Further comments on PC motion 13.2? Seeing none, we'll proceed—

Mr. Randy Hillier: Recorded vote.

The Chair (Mr. Shafiq Qaadri): Recorded vote. We'll proceed to the recorded vote.

Ayes

Gélinas, Hillier, Yurek.

Nays

Berardinetti, Delaney, Martins, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): I declare PC motion 13.2 to fall.

We now proceed to government motion 14: Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I move that clause 55.11(1)(a) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(21) of schedule 1 to the bill, be struck out and the following substituted:

"(a) practices and procedures that the prescribed organization must have in place to protect the privacy of the individuals whose personal health information it receives and to maintain the confidentiality of the information:"

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 14? Ms. Naidoo-Harris, then Mr. Hillier.

Ms. Indira Naidoo-Harris: This is essentially a technical motion which ensures consistent phrasing between 55.11(1)(a) and 55.11(1)(c).

The Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: It certainly appears that the government wants to prescribe to prescribed organizations restrictions to maintain confidentiality of information, but as we've seen from the earlier arguments, they don't want to hold themselves to that account, and allow anybody in their ministry to have any confidential information whatsoever.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 14? Seeing none, we'll proceed to the vote. Those in favour of government motion 14? Those opposed? Government motion 14 carries.

We'll now proceed to government motion 15: Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I move that clause 55.11(1)(c) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(21) of schedule 1 to the bill, be amended by striking out "maintain confidentiality with respect to the information" at the end and substituting "maintain the confidentiality of the information".

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 15? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: This is another technical motion which ensures that there is consistent phrasing with subsection 55.11(1)(a).

The Chair (Mr. Shafiq Qaadri): If there are no further comments, then we'll proceed to the vote. Those in favour of government motion 15? Those opposed? Government motion 15 carries.

We'll now proceed to government motion 16: Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I move that clause 55.11(1)(d) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(21) of schedule 1 to the bill, be amended by striking out "give notice under subsection 12(2) and 55.5(6) and (7)" and substituting "give notice to individuals under subsections 12(2) and 55.5(7)".

The Chair (Mr. Shafiq Qaadri): Further comments? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: This motion just basically clarifies that the advisory committee's recommendations would be in respect of the prescribed organization's role in assisting health information custodians to comply with their obligation to give privacy breach notices to individuals.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote. Those in favour of government motion 16? Those opposed? Government motion 16 carries.

PC motion labelled 16.1: Mr. Hillier.

Mr. Randy Hillier: I move that subsection 55.11(3) of the Personal Health Information Protection Act, 2004,

as set out in subsection 1(21) of schedule 1 to the bill, be struck out and the following substituted:

"Appointments

"(3) The minister shall appoint the members of the advisory committee in accordance with subsection (3.1) and the prescribed requirements, if any.

"Same

"(3.1) The members of the advisory committee must include:

"1. At least one individual who is a member of the College of Physicians and Surgeons of Ontario.

"2. At least one individual who is a member of the College of Nurses of Ontario.

"3. At least one individual who is a member of the Ontario Medical Association.

"4. At least one individual who is a member of the public."

The Chair (Mr. Shafiq Qaadri): Ms. Naidoo-Harris? Ms. Indira Naidoo-Harris: The government will not be supporting this motion. This motion attempts to require what types of individuals should sit on the advisory committee. The government feels that by quantifying this, we're limiting it. Currently, HIPA allows the minister to appoint members as the situation requires. HIPA provides the authority for committee membership to be prescribed in regulation if needed.

For example, in the list that's been moved forward, pharmacists are left out. Also, there's the College of Nurses that's been inserted, but not the nurses' association. We feel that this motion, while attempting to broaden things, is actually limiting it. We will be rejecting this motion.

The Chair (Mr. Shafiq Qaadri): Mr. Yurek and then Mr. Hillier.

Mr. Jeff Yurek: We've noted, and the OMA had noted in their dissertation, that the information-sharing framework governance committee was quite successful, and that's due in part to multidisciplinary membership. I imagine you could probably go through the entire Ministry of Health and note that they probably have the most success when, indeed, they are involving multidisciplinary groups.

I don't have the confidence that this government will have an advisory committee that contains multi-disciplinary groups. Particularly, I'm pretty sure the OMA will probably be excluded, considering this government has personally taken to attacking them through the media.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: Contrary to the member's assertion, this amendment would not prevent the government from having additional people on the advisory committee; it just sets out the minimum of who will be. It certainly appears to me that the government wants to have an advisory committee of just Liberal Party donors, the way they're going about this bill, where they don't want to have any responsibility or any obligation to the public about who is providing advice.

The way the bill is written, without this amendment and without others that we've spoken about, we could just see an advisory committee of Liberal bagmen. That's not what we expect; it's not what I expect.

If the government is being honest about having broad representation on this advisory committee, put your money where your mouth is. Put it in the legislation. What groups are going to be on this advisory committee, or are you going to hide and just have friends on this advisory committee?

The Chair (Mr. Shafiq Qaadri): Any further comments on PC motion 16.1?

Mr. Randy Hillier: Recorded vote.

Ayes

Hillier, Yurek.

Nays

Berardinetti, Delaney, Martins, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): PC motion 16.1 falls.

We're now on PC motion 16.2. Mr. Hillier.

Mr. Randy Hillier: I move that subsection 55.12(1) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(22) of schedule 1 to the bill, be struck out and the following substituted:

"Practices and procedures review

"(1) The commissioner shall review the practices and procedures of the prescribed organization referred to in paragraph 14 of section 55.3 every three years after they are first approved to determine if the practices and procedures continue to meet the requirements of subparagraph 14 i of section 55.3 and, after the review, the commissioner may renew the approval."

The Chair (Mr. Shafiq Qaadri): Any further comments on this?

Mr. Randy Hillier: It's pretty straightforward, Chair. Let's review our practices, mandate a review, mandate when the review will happen and allow ourselves to analyze, examine and evaluate the effectiveness.

The Chair (Mr. Shafiq Qaadri): Further comments? Madame Gélinas.

M^{me} France Gélinas: I will be supporting this, simply because the language is a lot more forthright and clear. I think what they had under "Practices and procedures review"—the intention is the same; just the new wording makes it without ambiguity—a lot clearer.

The Chair (Mr. Shafiq Qaadri): Any further comments? We'll proceed to the vote. Those in—oh, Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Just that this is a consequential amendment, based on the PCs' previous motion. It's intended to strike out the provisions that authorize the ministry to access EHR data. This motion removes all reference to the ministry's access to EHR data. If we delete 55.9, it will remove the ministry's

ability to collect EHR data for use in health planning and for fraud detection.

The Chair (Mr. Shafiq Qaadri): Ms. Naidoo-Harris, just let me confirm: We are currently on PC motion 16.2?

Ms. Indira Naidoo-Harris: Yes.

The Chair (Mr. Shafiq Qaadri): Fair enough.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Mr. Randy Hillier: I'm not sure what talking points the member had in front of her, but this amendment, as you can see, is just that the commissioner shall review the practices every three years. I think the talking point papers got mixed up.

Let's get back to 16.2. This defines when that review

will happen.

The Chair (Mr. Shafiq Qaadri): Are there any further comments? Ms. Naidoo-Harris?

Ms. Indira Naidoo-Harris: I stand corrected. We won't be supporting this.

The Chair (Mr. Shafiq Qaadri): Any further comments before we proceed to the vote on PC motion 16.2?

Mr. Randy Hillier: I guess it doesn't make any difference if the talking points get confused. It's still going to be rejected if it's an opposition amendment, is what we can take away from that argument.

The Chair (Mr. Shafiq Qaadri): We'll now proceed to the vote.

Mr. Randy Hillier: Recorded vote.

The Chair (Mr. Shafiq Qaadri): Recorded vote.

Ayes

Gélinas, Hillier, Yurek.

Navs

Berardinetti, Delaney, Martins, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): PC motion 16.2 falls.

We'll now proceed to government motion 17. Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I move that subsection 55.12(2) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(22) of schedule 1 to the bill, be struck out and the following substituted:

"Notice by commissioner

"(2) The commissioner shall advise health information custodians of the results of a review conducted under subsection (1)."

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. Further comments from you, and then Mr. Hillier.

Ms. Indira Naidoo-Harris: This clause originally stated that the IPC would inform the prescribed organization and the prescribed unit that their practices and procedures are IPC-approved. In practice, the custodian would need to be informed that the practices and procedures have been approved, and the prescribed organization

and ministry unit or units would already know if they have been IPC-approved. This is just ensuring that health information custodians are advised of the information.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier?

Mr. Randy Hillier: I would suggest that it ensures nothing. When you read that amendment, "The commissioner shall advise health information custodians of the results of a review"—of course, it doesn't say when they'll be advised of that review. It doesn't state how or when those reviews will happen. This is a meaningless, rhetorical, do-nothing amendment, much like many parts of this bill, when it comes to protecting personal information and privacy information.

Once again, "The commissioner shall advise health information custodians of the results of a review...." I'll put it to the government: When will that review be advised? When will the commissioner advise? Is it within 30 days? Is it within 60 days? Is it within five years? What obligation will be imposed on the commissioner

with this amendment?

The Chair (Mr. Shafiq Qaadri): Any further comments on government motion 17? Ms. Naidoo-Harris?

Ms. Indira Naidoo-Harris: I just want to ensure that I clarify that this technical motion ensures that there is more clarity between the government, the Information and Privacy Commissioner and the health information custodians, like hospitals, all of whom are important players in ensuring that patient information is protected. I understand that this will be reviewed every three years. 1430

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we shall proceed to the vote on government motion 17. Those in favour of government motion 17? Those opposed? Government motion 17 carries.

Government motion 18: Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I move that section 1 of schedule 1 to the bill be amended by adding the following subsection:

"(22.1) The act is amended by adding the following section:

"Protection from liability for health information custodian

"55.12.1 A health information custodian who, acting in good faith, provides personal health information to the prescribed organization by means of the electronic health record is not liable for damages resulting from,

""(a) any unauthorized viewing or handling of the provided information, or any unauthorized dealing with the provided information, by the prescribed organization, its employees or any other person acting on its behalf; or

"(b) any unauthorized collection of the provided information by another health information custodian."

The Chair (Mr. Shafiq Qaadri): Any further comments on government motion 18? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: This motion essentially just clarifies that if a health information custodian transmits personal health information to the prescribed organization, the custodian is not responsible for any unauthorized viewing, handling or dealing with the trans-

mitted information and any unauthorized collection of the transmitted information.

What this does is essentially create a clear sense of responsibility. For example, once the hospital sends the information on to the prescribed organization, that information and its privacy is the responsibility of that organization. This is something that the Ontario Hospital Association asked for. They wanted this clarification, and we agreed they should have it.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 18? Seeing none, we'll proceed to the vote. Those in favour of government motion 18? Those opposed? Government motion 18 carries.

We'll now move to PC motion 18.1: Mr. Hillier.

Mr. Randy Hillier: I move that clause 55.13(2)(g) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(23) of schedule 1 to the bill, be struck out.

The Chair (Mr. Shafiq Qaadri): Any comments? Mr. Yurek.

Mr. Jeff Yurek: This amendment would remove the ability of the ministry to not only collect and use personal health information, but would stop the ministry from being able to name any part of the ministry to have access to individuals' personal health information.

As I mentioned earlier, there is quite the concern out in the public, and among some health professionals, that the knowledge that the minister and the ministry will have access to personal information may deter people from seeking the medical help that they do need.

In particular, I will reference mental health conditions. We spend so much time having the Bell Let's Talk campaign to have people move past the stigma. The fear is that this government would now have access to personal conversations and discussions with their medical practitioner.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas and then Madame Naidoo-Harris.

M^{me} France Gélinas: The government has to realize that it doesn't matter how you look at it: A person working for the Ministry of Health will never be part of the circle of care. The people working for the minister do not need to have personal health information with identifiers.

I don't know how else we can tell you that, but you have an entire bill that has clause after clause set up to do just that. You will undermine any chance of this bill having any success in changing the culture of protection within the health care system when you have clause after clause that tells you that we will have a telescope in the minister's office to look at anyone's personal health record and find out the most intimate, personal information about you. This is what your bill does. It is wrong. You have to change your mind, and this is the opportunity to do that.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas. Madame Naidoo-Harris?

Ms. Indira Naidoo-Harris: I understand the passion that the member opposite feels about this and I respect her feelings. Once again, in order for governments to

make informed decisions, in order for us to be able to continue when it comes to research and science, it is important to have access to relevant, de-identified health data. This is a principle that's upheld in many corners of the sector in the world. This information is integral to fighting fraud and to ensuring that, as governments, we come up with programs and plans that will ensure that the quality of health in our province is meeting the levels of excellence it needs to.

HIPA ensures that Ontario maintains its position as a leader in health. HIPA provides privacy, accountability and transparency. All we're trying to do, I will tell the member opposite, is ensure that that information becomes de-identified, is not identifiable and is anonymous so that governments can plan and research can continue. I do hope that this idea is being clearly communicated.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. Mr. Hillier, then Madame Gélinas.

Mr. Randy Hillier: This amendment would restrict the ability of the minister or the ministry to delegate who else gets information, by stealth—by regulation. We all know that when the minister or the ministry makes regulations, that does not come back before the House for scrutiny at any time, so to suggest that this is needed—that the ministry needs to have greater latitude without legislative oversight to allow the ministry to share information with an even greater, broader circle of people—is foolish.

The member from Nickel Belt implored the government to change their mind. I guess I should state that the people in this committee didn't make the decision in the first place, so it's hard for them to change their minds when they didn't make any determination or decision in the first place.

The Chair (Mr. Shafiq Qaadri): Thank you. Madame Gélinas?

M^{me} France Gélinas: The member says all the right things, like it's important to have access to de-identified info. But that's not what the bill says. We are not here to listen to what she wishes the bill would do. We're here to rate the bill, and the bill says that there will be two units within the ministry and this gives the minister the opportunity to name more units which will have access to our personal information, with identifiers.

I know that your heart is in the right place and what you would like it to say, but it doesn't. You have to read what's in front of you—not the notes that they prepare for you, but the bill that we are talking about.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas. Are there any further comments before we proceed to the vote on PC motion 18.1?

Mr. Randy Hillier: Recorded vote.

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, I'll proceed to the recorded vote on PC motion 18.1.

Ayes

Nays

Berardinetti, Delaney, Martins, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): PC motion 18.1 falls.

We now proceed to PC motion 18.2: Mr. Hillier.

Mr. Randy Hillier: I move that section 72 of the Personal Health Information Protection Act, 2004, as amended by subsection 1(26) of schedule 1 to the bill, be amended by adding the following subsection:

"Reverse onus for prescribed organization

"(9) If a prescribed organization is charged with contravening clause (1)(a) with respect to personal health information that is accessible by means of the electronic health record, as defined in subsection 55.1(1), the onus is on the prescribed organization to prove that it took reasonable care to avoid committing the offence."

1440

The Chair (Mr. Shafiq Qaadri): Mr. Yurek?

Mr. Jeff Yurek: This amendment is basic. It's adding accountability to organizations in the health care system to ensure that they're doing the best of their ability to provide protection of private health information. It's accountability that we've been pushing this government on, on any aspect of legislation in the House that needs to be returned to not only the Legislature but the government of Ontario.

We're hoping they will listen and add this bit of accountability that the people of Ontario continually ask for.

The Chair (Mr. Shafiq Qaadri): Any further comments on PC motion 18.2? Madame Naidoo-Harris?

Ms. Indira Naidoo-Harris: This motion essentially attempts to put a reverse onus on the prescribed organizations to prove it took reasonable care to avoid committing the offence of wilfully collecting or disclosing personal health information.

We feel this motion is unnecessary because unintentional privacy breaches, which may occur despite reasonable care taken by the health information custodian, are not offences under PHIPA. The fact that it took reasonable care to avoid committing a wilful offence would not be a viable defence to the charge.

The Chair (Mr. Shafiq Qaadri): Any further comments, Mr. Hillier?

Mr. Randy Hillier: I wish they'd used that argument with all of their other legislation where they brought out strict liability for everybody else and a requirement of due diligence. I find it odd that it is now not fashionable, or not vogue, for the government to have this onus placed on prescribed organizations.

Listen: That section deals with a wilful breach—not an unintentional or accidental breach, but a wilful breach. There clearly should be an onus placed on that organization to demonstrate that they took all reasonable precautions, and bear out that argument.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas? M^{me} France Gélinas: I wish we would take a little bit of time to look at this bill through the eyes of the people

that will be affected, through the eyes of the people whose privacy will have been breached. If your privacy has been breached by a health care worker in the hospital, or a secretary in the hospital, sure, I hope the secretary will lose her job. But what we're trying to put in there is that the secretary, who has no means to defend herself—she will probably be hung out to dry. If she breached confidentiality, I have no problem with that. But the hospital that allowed that to happen doesn't have to prove that—even if it happens over and over, there will be no onus put on them to prove that they have taken reasonable precautions.

This is important enough that even the big players should be held accountable, and this is what this is trying to do. Not just the low-hanging fruits who looked, but the employer that she or he worked for, also has to be held accountable and show that they are taking this seriously enough so that they can show that reasonable care was taken to avoid it. Don't just hang the person that has a lower defence; hold the big players accountable also.

The Chair (Mr. Shafiq Qaadri): Further comments? Mr. Hillier.

Mr. Randy Hillier: I guess the argument if this happens, according to the government, will be that the argument for the breach from a prescribed organization will be, "Well, we're still waiting to hear the advice back from the commissioner," who we didn't compel to give us any advice in the first place and to look over our procedures that we talked about in the previous amendment.

You can start to see just how many holes this government is prepared to create and how many gaps and problems they're willing to accept. As long as it appears that they've done something to satisfy the requirements of the courts, that's enough. Whether it works in practice is irrelevant and immaterial, from hearing the arguments from the government side today.

The Chair (Mr. Shafiq Qaadri): Any further comments? Madame Naidoo-Harris.

Ms. Indira Naidoo-Harris: Just once again, I wanted to point out that unintentional privacy breaches are not considered offences under PHIPA, and I think we're talking about unintentional privacy breaches.

The Chair (Mr. Shafiq Qaadri): Any further comments on PC motion 18.2?

Mr. Randy Hillier: Recorded vote, please.

The Chair (Mr. Shafiq Qaadri): Recorded vote.

Ayes

Gélinas, Hillier, Yurek.

Nays

Berardinetti, Delaney, Martins, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): PC motion 18.2 falls. That is the consideration of all the various motions with reference to that section of schedule 1. Shall section 1 of schedule 1, as amended, carry? Carried.

We have, to date, not received any material, motions or amendments for schedule 1, section 2. Shall it carry? Carried.

Similarly, for schedule 1, section 3, shall it carry? Carried.

We have received an NDP motion, 18.3, which is with reference to schedule 1, section 4. Are all the members in possession of NDP motion 18.3? It should have been handed out separately from the main package. Madame Gélinas.

M^{me} **France Gélinas:** I move that schedule 1 to the bill be amended by adding the following section:

"Social Work and Social Service Work Act, 1998

"4.1 The Social Work and Social Service Work Act, 1998 is amended by adding the following section:

"Electronic health record

"38.1(1) The minister may make regulations,

""(a) requiring the college to collect from its members information relating to its members that is specified in those regulations and that is, in the minister's opinion, necessary for the purpose of developing or maintaining the electronic health record under part V.1 of the Personal Health Information Protection Act, 2004, including ensuring that members are accurately identified for purposes of the electronic health record;

"(b) requiring the college to provide the information to the prescribed organization in the form, manner and time frame specified by the prescribed organization;

"(c) respecting the notice mentioned in subsection (4).

"Members to provide information

"(2) Where the minister has made a regulation under subsection (1), and the college has requested information from a member in compliance with the regulation, the member shall comply with the college's request.

"Use and disclosure by prescribed organization

"(3) Despite a regulation made under subsection (1), the prescribed organization,

"(a) may only collect, use or disclose information under this section for the purpose provided for in subsection (1):

"(b) shall not use or disclose personal information collected under this section if other information will serve the purpose; and

"(c) shall not use or disclose more personal information collected under this section than is necessary for the purpose.

"Notice required by s. 39(2) of FIPPA

"(4) Where the minister has made a regulation under subsection (1), and the college is required to collect personal information from its members, the notice required by subsection 39(2) of the Freedom of Information and Protection of Privacy Act is given by,

"(a) a public notice posted on the prescribed organization's website; or

"(b) any other public method that may be prescribed in regulations made by the minister under subsection (1).

"Same

"(5) If the prescribed organization publishes a notice referred to under subsection (4), the prescribed organization shall advise the college of the notice and the college shall also publish a notice about the collection on the college's website within 20 days.

"Definitions

"(6) In this section,

""information" includes personal information, but does not include personal health information;

("renseignements")

""'personal health information" has the same meaning as in section 4 of the Personal Health Information Protection Act, 2004; ("renseignements personnels sur la santé")

""prescribed organization" has the same meaning as in section 2 of the Personal Health Information Protec-

tion Act, 2004. ("organisation prescrite")""

Basically, what this does is that if you look on page 23 of the bill, section 4, the Regulated Health Professions Act is amended by adding the following section. Social workers are not covered by the Regulated Health Professions Act—

Le Président (M. Shafiq Qaadri): Madame Gélinas, excusez-moi.

1450

M^{me} France Gélinas: Sorry.

Le Président (M. Shafiq Qaadri): Vous avez fini? M^{me} France Gélinas: I'm done.

Le Président (M. Shafiq Qaadri): Oui, d'accord. Malheureusement, je dois vous informer que votre motion est irrecevable. Nous avons legislative counsel to weigh in on it, if you need further confirmation.

M^{me} France Gélinas: Can I ask for unanimous con-

sent that we consider it?

The Chair (Mr. Shafiq Qaadri): You may certainly ask for unanimous consent.

Mr. Randy Hillier: May I ask for a translation of that first?

The Chair (Mr. Shafiq Qaadri): Oh, yes. Thank you. Madame Gélinas has just presented NDP motion 18.3. This is out of order. I have offered for legislative counsel to weigh in on the reasons for that, should further explanation be required. I think we probably need to deal with that issue first before anything else happens.

Do you need an explanation as to why the motion is

out of order, Madame Gélinas?

M^{me} France Gélinas: I think I already know. It's because it's modifying the legislation that has to do with social workers, and we're talking about the Regulated Health Professions Act.

I'm asking for unanimous consent that we can modify this other act so that social workers are included, because 9,000 of them work in our health care system, and right now, we've forgotten them.

The Chair (Mr. Shafiq Qaadri): Thank you. Do I have unanimous consent to open the referred-to act so that it will enable section 18.3 to be in order?

Mr. Bob Delaney: Point of order.

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Delaney?

Mr. Bob Delaney: Chair, even with unanimous consent, would the Clerk confirm whether or not the committee would have that power, in which case, if it doesn't, the request for unanimous consent would also be out of order?

The Chair (Mr. Shafiq Qaadri): I fully appreciate your plausibility, and I'm not adequately caffeinated to rule, but I will invite those who are. Thank you.

Interjections.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, although your point is very well taken and did require a mutual consultation, apparently it is in fact in order to ask for unanimous consent to enable this motion to also be in order. But it will require unanimous consent of the committee.

Therefore, I ask again: Do I have unanimous consent to open this particular—no. I heard dissent. Therefore, I cannot grant unanimous consent. Therefore, the motion is now out of order.

We will now proceed to simply ask: Shall section 4, schedule 1, carry? Carried.

Similarly, we have not received to date any motions with regard to schedule 1, section 5. Shall section 5 of schedule 1 carry? Carried.

Shall schedule 1, as amended, carry? Carried.

We now proceed to consideration of schedule 2, section 1. To date, I have not received any motions with reference to it. Shall section 1, schedule 2, carry? Carried.

We have received two motions with reference to schedule 2, section 2. We now proceed to NDP motion 19. Madame Gélinas.

M^{me} France Gélinas: I move that paragraph 3 of subsection 2(3) of the Quality of Care Information Protection Act, 2015, as set out in schedule 2 to the bill, be amended by striking out "critical" before "incident" in the portion before subparagraph i.

The Chair (Mr. Shafiq Qaadri): Are there any further comments on NDP motion 19? Madame Gélinas.

M^{me} France Gélinas: This request comes from the Information and Privacy Commissioner. He recommended removing the word "critical" in this section to ensure that the definition remains consistent with the current definition in section 1 of QCIPA.

The Information and Privacy Commissioner states:

"The proposed legislation appears, in some respects, to be less open and transparent than the current QCIPA, the statute it will replace, especially in relation to incidents that do not fit within the definition of a 'critical incident.' By narrowing the types of information that are excluded from the definition of 'quality of care information,' it is my view that the enactment of the proposed legislation may result in the disclosure of less information to individuals and their authorized representatives and therefore less openness and transparency than is currently the case under QCIPA....

"I therefore recommend that the proposed legislation be amended to ensure that individuals and their authorized representatives continue to have a right of access to facts of what occurred in respect of all incidents that are reviewed under the proposed legislation, rather than just facts relating to critical incidents. This is consistent with the current provisions of QCIPA."

The wording of the motion came from the Information and Privacy Commissioner.

The Chair (Mr. Shafiq Qaadri): Further comments?

Ms. Indira Naidoo-Harris: I just want to tell the member opposite that the government does share the goal of this motion. However, to make sure information relating to incidents is not shielded from patients' families and is captured in a more comprehensive way, we are proposing another government motion, number 20. We just feel that that would implement it more effectively—to ensure patient access to information through motion 20.

The Chair (Mr. Shafiq Qaadri): Any further comments? We'll proceed, then, to the vote.

Those in favour of NDP motion 19? Those opposed to NDP motion 19? NDP motion 19 falls.

We now proceed to government motion 20. Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I move that subsection 2(3) of the Quality of Care Information Protection Act, 2015, as set out in schedule 2 to the bill, be amended by adding the following paragraph:

"3.1 Information that consists of facts contained in a record of an incident involving the provision of health care to a patient."

The Chair (Mr. Shafiq Qaadri): Comments?

Ms. Indira Naidoo-Harris: Essentially, Chair, we feel that this motion will help to increase transparency by retaining a provision from the original QCIPA. It will make sure that patients and their families can access the facts about all health care incidents that can be reviewed under QCIPA, in addition to facts relating specifically to critical incidents.

It also maintains what we think is a crucial link between QCIPA and the Public Hospitals Act regulation 965 by ensuring that the full requirements regarding critical incident disclosures to patients are also represented in QCIPA.

We just feel that this motion is more detailed and increases transparency.

The Chair (Mr. Shafiq Qaadri): Any further comments on government motion 20? Seeing none, we'll proceed to the vote.

Those in favour of government motion 20? Those opposed? Government motion 20 carries.

Shall schedule 2, section 2, as amended, carry? Carried.

To date, we have received no amendments or motions for schedule 2, section 3. Shall it carry? Carried.

We shall proceed to the next section—schedule 2, section 4—for which we have received government motion 21. Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I move that clauses 4(1)(a) and (b) of the Quality of Care Information

Protection Act, 2015, as set out in schedule 2 to the bill, be struck out and the following substituted:

"(a) offer to interview a patient or the authorized representative of the patient or the patient's estate in any review of an incident or circumstances involving the provision of health care to the patient;

"(b) include a person responsible for patient relations or providing patient perspectives to the facility on a committee or other similar body conducting any review of a critical incident; or"

The Chair (Mr. Shafiq Qaadri): Comments? Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Chair, we just feel that this motion actually clarifies that a patient does not have to agree to be interviewed about a critical incident if they choose not to. It gives them the right to say no and provides flexibility for health facilities involved in designating the right person to represent the patient perspective on a committee reviewing a critical incident. 1500

The feeling is that this motion would make a minor technical change that ensures that the language is consistent in provisions that make the critical incident review process more patient-centred and more patient-sensitive, I would say.

The Chair (Mr. Shafiq Qaadri): Any further comments on government motion 21? Seeing none, we will proceed to the vote.

Those in favour of government motion 21? Those opposed? Government motion 21 carries.

Shall schedule 2, section 4, as amended, carry? Carried.

We have received no amendments or motions to date for the next four sections, all of schedule 2. May I take it that it is the will of the committee to consider them all en bloc, which is sections 5, 6, 7 and 8? Agreed? Agreed.

Shall, of schedule 2, sections 5, 6, 7 and 8 carry? Carried.

We now proceed to schedule 2, section 9, and although we have three amendments submitted, motions labelled 22, 23 and 23.1, we will actually consider motion 23 before 22, for highly abstruse reasons. Motion 23 is the NDP's: Madame Gélinas.

M^{me} France Gélinas: I move that section 9 of the Quality of Care Information Protection Act, 2015, as set out in schedule 2 of the bill, be amended by adding the following subsection:

"Exception, disclosure to the commissioner

"(4.1) Despite subsection (1), a person may disclose quality of care information to the commissioner for the purpose of enabling the commissioner to carry out the commissioner's powers and duties under the Freedom of Information and Protection of Privacy Act, the Municipal Freedom of Information and Protection of Privacy Act and the Personal Health Information Protection Act, 2004."

The Chair (Mr. Shafiq Qaadri): Any further comments on NDP motion 23?

Ms. Indira Naidoo-Harris: We feel this motion would undermine the trust and confidentiality of QCIPA, resulting in health care staff being hesitant to openly share information with a quality of care committee. We feel that the act actually ensures that patients are provided with facts about incidents. The ministry agrees with the need to ensure patients and their families can get help from an independent body when they are dissatisfied with a critical incident review, including those reviewed under QCIPA, so we really feel that this motion would undermine the trust when it comes to the confidentiality process of QCIPA.

The Chair (Mr. Shafiq Qaadri): Any further comments on NDP motion 23? Madame Gélinas?

M^{me} France Gélinas: I'll let him go first.

The Chair (Mr. Shafiq Qaadri): Good. Mr. Hillier?

Mr. Randy Hillier: We heard in the committee, specifically on this one, a powerful delegation. I believe the gentleman's name was Joe Colangelo. He brought in somebody with him to the committee hearing who had been recently involved in the courts. The argument that was put forth, I think with substantial merit, was that this section needed amendments substantially because the way it was worded would prevent disclosure of necessary information in the courts for patients or patients' estates to know what actually had happened.

The arguments were also about how this part of the bill was going against and opposing the direction of any instructions of our courts, and our belief and recognition of just what is a just society. The courts are going in one direction and it appears the government is going in a direction that is 180 degrees away. When the member says this undermines the trust, I think what it undermines, if it's not adopted, is justice, not trust. Anything that is discussed in this fashion ought to be available to the courts, in the case that a case ends up in front of the courts. We can't hamstring and restrict our courts from finding facts. That's the purpose of the courts. To legislatively put blinders on our courts is unacceptable.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments? Madame Gélinas?

M^{me} France Gélinas: You have to look at it through the view of the patient and their family, which is, who wants to have access to this information? What the Information and Privacy Commissioner is asking for is for his office—not the whole family; for his office—to have access to the quality-of-care information to determine whether it is properly excluded from access under the Ontario access and privacy law.

Right now, you are leaving in the people who have everything to gain in keeping information away from the patients. Something has gone wrong. They've held one of those meetings; they held it under quality-of-care information. It would be very easy to be tempted to hide as much of your mistakes as possible. That's fine if it falls within the parameters that we have put there.

All we're asking is for somebody to have access—that's the Information and Privacy Commissioner—to make sure that there isn't any information that is being

kept, under the quality of care information, away from patients that really should have been made public.

Right now, you put the people who have made the mistake to start out with, and who don't want anybody do know that they've made a mistake, in charge of deciding what information will be available and won't be available. All we're asking for is that all of that information won't be made available. We only ask for the Information and Privacy Commissioner to be able to have a look to make sure that the right amount of information—and the right information—is also being shared. It's called oversight.

Remember municipalities? They used to go in camera. Then we brought in oversight and realized that they often went in camera because they did not want people to hear what they had to say, but they had no rights. Those are human beings who have made those mistakes.

Human beings behave in the same way. It doesn't matter if you're a surgeon or an MPP or anybody else. We don't want people to know when we make a mistake. We have to give this process—that shields an awful lot of information forever—oversight so that there are no mistakes.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. Naidoo-Harris?

Ms. Indira Naidoo-Harris: I just want to say that I do understand MPP Gélinas's concerns. I just would remind MPP Gélinas that patients who have concerns about how a health care provider has reviewed a critical incident have the opportunity to take their complaints forward to the patient ombudsman. The patient ombudsman may be able to facilitate a resolution to the complaint, so there is a process in place for patients to file complaints when they have a question about a critical incident investigation.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier?

Mr. Randy Hillier: Subsections 9 and 10 are placing unnecessary barriers, and barriers that will create injustice.

Further to the member from Nickel Belt's comments, the people who have made an error or made a mistake, and whatever the consequence of that error or mistake has been, whether it's a fatality or whether it's a serious injury or whatnot—it can't be allowed just to those people to determine what information is going to be brought out and allowed to the person who has been affected.

1510

First, foremost, and without a doubt the only priority: This legislation ought to be protecting the individual. That's what it's meant to do: protect the individual, not obstruct and prevent individuals from finding out what actually happened to them.

Those two sections really are inconsistent with, and contrary to, any sense of justice and any recognition of the importance of the patient and the importance of the individual. That's what legislation is made for: to protect people, not to allow cover-ups or to obscure information from being brought forward.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Any further comments? Madame Naidoo-Harris.

Ms. Indira Naidoo-Harris: Yes, Chair—just a reminder that the patient ombudsman will be able to facilitate a resolution to the complaint. We feel that there is a process in place to deal with these issues.

The Chair (Mr. Shafiq Qaadri): Thank you. Madame Gélinas.

M^{me} France Gélinas: The patient ombudsman won't have access to the quality of care information that is shared. What we're asking for is if we want the public to have trust in this, that good things would come from having those meetings shielded, you need to have independent oversight—this is crucial—so that we can uphold the integrity of the quality of care information. Otherwise, the entire premise of the quality of care information will be seen in the same way it is seen right now. This is a way for health professionals who have made a mistake to shield their mistakes from the people who live with the sometimes drastic consequences of their mistake. That's what we have now.

If you don't give it oversight, we will be in the exact same boat as we are now, where people will use this to shield as much information as possible because they know they have made a mistake. You will have hundreds of families who cannot gain closure because they don't know what happened to their loved one, because the information is kept secret from everyone, including the patient ombudsman. Give it integrity.

The Chair (Mr. Shafiq Qaadri): Any further comments on NDP motion 23? Mr. Hillier.

Mr. Randy Hillier: Listen, somebody over there has got to be doing some reading somewhere or listening to some of the delegations that came to this committee. I can't believe that there is an absence of thought and a complete silence of interaction here on this.

Do the government members not think that it's important that patients—individuals—are informed honestly and forthrightly of what may have happened to them while they were seeking care? How can you devise a piece of legislation that, with subsections 9 and 10, purposely excludes individuals from finding honest, factual information?

To suggest that a recourse and remedy is to go and apply for permission from somebody else who is also just as obscured from the information is completely ridiculous—completely ridiculous. The argument has no foundation.

Stand up, protect the individuals who voted for you, protect their families and ensure not that they have an avenue to seek information, but that they have a bloody legislative right to find out the information.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments on NDP motion 23? Mr. Potts.

Mr. Arthur Potts: We have listened very carefully and we've seen the transcripts and what people came to talk to us about. We have a lot more faith, I believe, in the role that the ombudsman would play than what I'm hearing from the other side. The right ombudsman, the

right circumstances—the sensitivities are there. People will be protected; the information will be fine.

I have a difference of opinion about how these sections will work, compared to what the opposition members are saying. We're quite content to go forward with the way that it's drafted.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: It would be nice if your difference of opinion was based on some fact, Mr. Potts. You may have confidence, but this committee is not studying the confidence of the Ombudsman. This committee is studying the statute that is in front of us. That's what we're doing, not having a discussion about how much we like an Ombudsman or how much faith or confidence we may have in him. We're talking about the law; you're making the law. You're purposely preventing people from finding out what happened to them.

You can smirk. I hope nothing ever happens to any of your loved ones, Mr. Potts, where they need to find information about what happened to them in case of an error. I'd rather you not have to seek permission from somebody to get information, but that you have a legislative right to find out what happened to your loved one.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas.

M^{me} France Gélinas: Basically, something has gone wrong. You ask the hospital, "What happened to my loved one?" The hospital answers back to you: "We can't tell you this, because it is protected under the quality-of-care information." So you know that something has happened. You live with the proof that something has happened. You ask what happened, and this is what you're told.

We're not saying that this information will be shared with the patient. We're just saying that there will be an independent determination as to whether the hospital interpreted the QCIPA properly or not, because we know that the human reaction will be to hide as much of your mistake as possible.

In order to have confidence in the process, the patient who is told, "We can't tell you, because it's part of quality-of-care information" will be able to go to the Information and Privacy Commissioner, who will say, "Yes, they are within their rights," or, "No, they are not." All that this will do is give them peace of mind that somebody who is on their side has reviewed and made sure that the hospital did not hide things that they should have made public. That's all.

The Chair (Mr. Shafiq Qaadri): Ms. Naidoo-Harris. Ms. Indira Naidoo-Harris: I just wanted to empha-

size again that this whole act is here to ensure that patients are provided with the facts about incidents. Basically, what we are trying to do with this act is ensure that information is shared with patients when it comes to incidents.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: We can agree on that, that it is ostensibly what the purpose of this act is. What we're disagreeing with is the ability of this act to actually deliver it. It is clear that this act does not deliver on the

objective, but will actually make it more difficult in many instances, and impossible in many instances, for the disclosure of information to the individual who has been affected.

Chair, I'm going to be asking for recorded votes on subsection 9 and 10 amendments. I want to see, and have it recorded for all time, just who is voting to exclude and prevent patients from getting access to information when something has gone wrong.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. A recorded vote request is per vote, but we'll be happy to entertain that.

Are there any further comments on NDP motion 23 before we proceed to the recorded vote? I see none.

Ayes

Gélinas, Hillier, Yurek.

Nays

Berardinetti, Delaney, Martins, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): NDP motion 23 falls.

We'll proceed now to motion 22, also of the NDP: Madame Gélinas.

M^{me} France Gélinas: I move that subsection 9(2) of the Quality of Care Information Protection Act, 2015, as set out in schedule 2 to the bill, be amended by adding the following definition:

"Commissioner' means the Information and Privacy Commissioner appointed under the Freedom of Information and Protection of Privacy Act;"

The Chair (Mr. Shafiq Qaadri): Further comments? If not, we'll proceed to the vote.

Mr. Randy Hillier: Recorded vote.

The Chair (Mr. Shafiq Qaadri): Recorded vote.

Ayes

Gélinas, Hillier, Yurek.

Nays

Berardinetti, Delaney, Martins, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): NDP motion 22 falls.

We'll now proceed to PC motion 23.1: Mr. Hillier.

Mr. Randy Hillier: I move that schedule 2 to the bill be amended by adding the following section:

"Mandatory disclosure to Information and Privacy Commissioner

"9.1(1) In this section,

"Commissioner' means the Information and Privacy Commissioner.

"Same

"(2) Despite the Personal Health Information Protection Act, 2004 and subsection 9(1) of this act, a quality of care committee shall disclose quality of care information to the commissioner.

"Commissioner's review

"(3) The commissioner may, on his or her own initiative, conduct a review of any matter if the commissioner has reasonable grounds to believe that a person has contravened or is about to contravene a provision of this act or the regulations and that the subject matter of the review relates to the contravention.

"Notice

"(4) Upon deciding to conduct a review under this section, the commissioner shall give notice of the decision to every person whose activities are being reviewed.

"Application of other act

"(5) Sections 59 to 65 of the Personal Health Information Protection Act, 2004 apply to the review with necessary modifications as if the review were a review under section 57 or 58 of that act."

The Chair (Mr. Shafiq Qaadri): Further comments on PC motion 23.1? Mr. Yurek.

Mr. Jeff Yurek: Chair, this motion is basically adding some oversight and giving the commissioner some leeway in order to ensure that when they can do a review of any matter before them or decide to act on a possible contravention—that a review can take place, and those who have been involved are notified of what occurred during his decision related to the activities.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Ms. Indira Naidoo-Harris: The government side feels that this would undermine the trust and the confidentiality of QCIPA and result in health care staff being hesitant about openly sharing information with the quality-of-care committee.

More importantly, we feel that this motion would actually require disclosure without parameters about when disclosure would be required, which is highly problematic, we think, when you're dealing with sensitive information.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas?

M^{me} France Gélinas: I agree with PC motion 23.1, that we give the Information and Privacy Commissioner the opportunity to do an investigation. There are multiple reasons why people are reluctant to put in a complaint against a hospital or care providers.

I come from northern Ontario. A hospital or care providers are often the only show in town. People are really, really reluctant to put in a complaint against their hospital or against their care provider because they feel that human nature will play a role in the quality of care they will receive the next time they need care. If you give them the opportunity to go directly to the Information and Privacy Commissioner and give the privacy commissioner the authority to conduct a review on his or her own initiative, it protects patients, which is what we're there to do.

The Chair (Mr. Shafiq Qaadri): Madame Naidoo-Harris.

Ms. Indira Naidoo-Harris: We just feel that this motion would mean that the confidential quality-of-care information, which was provided by staff on the impression that it would be protected, would be potentially releasable through the freedom of information and protection act processes. That's our concern with this.

In essence, it opens the possibility of disclosure without parameters, and we feel that patients should be

protected against this.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas?

M^{me} France Gélinas: Everybody has noticed by now that we use "commissioner" without ever defining that we mean the privacy commissioner.

It's kind of a long list of "oopses" in that bill. We forget the social workers. We also forget that there is more than one commissioner. I'm not sure the Environmental Commissioner is that interested in QCIPA, but we could ask.

So you'll have to define that at some point. If you don't do this now, your chances are getting slimmer and slimmer all the time.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: I guess I'm to understand that although the member for Beaches-East York has lots of confidence in the ombudsman, none of the government members have any confidence in the privacy commissioner—that this patient ombudsman is a secure avenue, but heaven forbid that we should have any confidence in our Information and Privacy Commissioner. Listen, let's get with the program here, and let's get with reality. The Information and Privacy Commissioner is an officer of Parliament.

The amendment is pretty clear: "The commissioner may, on his or her own initiative, conduct a review of any matter if the commissioner has reasonable grounds to believe that a person has contravened or is about to contravene a provision of this act...." They would need to have reasonable grounds first—demonstrable evidence, not just hearsay. But what this government is saying is, even with some level of demonstrable evidence and reasonable grounds, we can't trust the privacy and information commissioner with this disclosure of information.

Absolute nonsense. But that's what we've been seeing with these amendments in subsections 9 and 10. They are purposeful and wilful obstruction—purposeful, to frustrate people from gaining access to their own information about what may have happened to them.

There are no words to describe the disdain that this government is showing for individuals in their ability to find information about what may have happened to them.

The Chair (Mr. Shafiq Qaadri): Are there any further comments on PC motion 23.1? If not, recorded vote. We'll now proceed to the vote on PC motion 23.1.

Ayes

Gélinas, Hillier, Yurek.

Navs

Berardinetti, Delaney, Martins, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): PC motion 23.1 falls.

Shall section 9 of schedule 2 carry?

Mr. Randy Hillier: Recorded vote, please.

The Chair (Mr. Shafiq Qaadri): Recorded vote. That's fine. Shall section 9 of schedule 2 carry? Recorded vote.

Mr. Bob Delaney: Excuse me. Could you repeat that, please?

The Chair (Mr. Shafiq Qaadri): We have considered the three motions for amendments that were received. We are now considering section 9, schedule 2, to carry. We have been asked for a recorded vote for the full section, which is what I am now asking for.

Ms. Indira Naidoo-Harris: Schedule 2, section 9: That's all you are referring to?

The Chair (Mr. Shafiq Qaadri): Correct.

Recorded vote, you're asking for? Fine. A recorded vote.

Shall section 9 of schedule 2, having defeated all the amendment motions, carry? Carried.

Interjection.

The Chair (Mr. Shafiq Qaadri): I'm sorry. It's a recorded vote.

Ayes

Berardinetti, Delaney, Martins, Naidoo-Harris.

Nays

Gélinas, Hillier, Yurek.

The Chair (Mr. Shafiq Qaadri): Section 9, schedule 2, carries.

To date, we have not received any amendment motions for schedule 2, section 10. Shall it carry?

Mr. Randy Hillier: Recorded vote, please.

The Chair (Mr. Shafiq Qaadri): Recorded vote on that as well.

Shall section 10 of schedule 2 carry?

Aves

Berardinetti, Delaney, Martins, Naidoo-Harris.

Nays

Gélinas, Hillier, Yurek.

The Chair (Mr. Shafiq Qaadri): Carried.

Similarly, we have not received any motions or amendments for section 11 of schedule 2. I presume it is a recorded vote. Mr. Hillier, recorded vote or no?

Mr. Randy Hillier: On which one?

The Chair (Mr. Shafiq Qaadri): On what we're considering right now, which is section 11 of schedule 2.

Mr. Randy Hillier: Pass.

The Chair (Mr. Shafiq Qaadri): Fine. Not a recorded vote. Shall this section carry? Carried.

We have received an amendment for the next item, PC motion 23.2, which is section 12, schedule 2. The floor is yours, Mr. Hillier.

Mr. Randy Hillier: Can I just ask for a brief five-minute recess?

The Chair (Mr. Shafiq Qaadri): A five-minute recess: Agreed? Agreed.

The committee recessed from 1531 to 1536.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We reconvene. As you know, we're considering PC motion 23.2. The floor is now open. Mr. Hillier?

Mr. Randy Hillier: Chair, the official opposition would like to withdraw amendments 23.2 and 23.3.

The Chair (Mr. Shafiq Qaadri): It's 23.2 and 23.3, Mr. Hillier, correct?

Mr. Randy Hillier: Yes.

The Chair (Mr. Shafiq Qaadri): All right. Those are officially withdrawn: 23.2 and 23.3.

Shall section 12 of schedule 2 carry? Carried. Shall section 13, schedule 2, carry? Carried.

Shall section 14, schedule 2, carry? Carried.

We're now onto section 15, schedule 2, NDP motion 24: Madame Gélinas.

M^{me} France Gélinas: I move that clause 15(2)(b) of the Quality of Care Information Protection Act, 2015, as set out in schedule 2 to the bill, be amended by adding "consistent with the purpose of this act and in the public interest" at the beginning.

The Chair (Mr. Shafiq Qaadri): Thank you. Any comments on NDP motion 24? Madame Gélinas.

M^{me} France Gélinas: Basically, this is to ensure that everything that you've said you wanted to do has to be in the bill so that it will guide us when none of us are around: to ensure that the minister's regulations regarding "restricting or prohibiting the use of quality-of-care committees for the purpose of reviewing critical incidents" shall be "consistent with the purpose of this act and in the public interest."

It is very easy to forget who we're doing this for. We're doing this for the patients because the quality of care meetings that are taking place right now have not been respectful to the people who have suffered incidents. This bill is there for things to change for the better, for patients to gain access and to gain closure. Let's put this in the bill so that it guides all other work that we will do down the road.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments on NDP motion 24? Madame Naidoo-Harris?

Ms. Indira Naidoo-Harris: We just feel that this motion really doesn't add much benefit to the act in the sense that all provisions under the act already have to be read and implemented in accordance with the broader goals and purposes of the act. So that's already there and it's already clear, making this amendment kind of unclear

and redundant. We really don't feel that this motion adds any real benefit to the act since the act already clarifies that all provisions must be read and implemented in accordance with the broader goals and purpose of the act.

The Chair (Mr. Shafiq Qaadri): Further comments on NDP motion 24? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 24? Those opposed? NDP motion 24 falls.

Shall section 15 of schedule 2 carry? Carried.

We now move to, I believe, the final amendment of the day, NDP motion 25.

M^{me} France Gélinas: I move that subsection 16(1) of the Quality of Care Information Protection Act, 2015, as set out in schedule 2 to the bill, be amended by striking out the portion before clause (a) and substituting the following:

"Public consultation before making regulations

"(1) The Lieutenant Governor in Council or minister shall not make any regulation under section 15 unless," and then the rest carries.

The Chair (Mr. Shafiq Qaadri): Any comments on NDP motion 25? Madame Gélinas.

M^{me} France Gélinas: Unfortunately, we have seen regulations being made by cabinet or the minister that did not have a chance for public notice and did not have a chance for the public to be consulted. What this does is that basically we are requiring that all regulations made by cabinet or the minister be made only after notice has been published for regulatory proposals on the government website and public comments have been accepted. If you're doing this so that people can get closure and so that we can help our health care system and help the people within our health care system, then let's make sure that when you start to do regulations, each and every one of them has notice, is published and people have an opportunity to be heard.

The Chair (Mr. Shafiq Qaadri): Madame Naidoo-Harris.

Ms. Indira Naidoo-Harris: We just feel that this motion's intent is actually already captured. There's already a government policy requirement to post both the minister's and the Lieutenant Governor in Council's regulations online for a 45-day public consultation period. There is a public consultation period of 45 days, so we really don't see any difference for public input between the LGIC and the ministry's regulations, and we feel that this motion's intent is actually already captured and not needed.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: Yes, I'll just say a comment: There's a difference between policy and statutory obligations. It is government policy to put regulations up for discussion, but it is not an obligation. With some acts, it is.

I'll just take the members of this committee back a few years ago to the G20 riots in Toronto and the change in regulations to the Public Safety Act at the time. They were not published; they were gazetted only. There was no opportunity for anybody to be informed or to have any influence in the regulation. Of course, afterwards, we saw

what happened when there was a poorly crafted regulation without public input or influence: Thousands of people were needlessly rounded up, and the Ombudsman had a scathing indictment of the government's handling of that regulation.

Contrary to the member's view that this amendment is redundant, it is absolutely not redundant. It is imperative that democratic governments actually act like democratic governments and that they encourage, permit and allow people to have knowledge of the laws, knowledge of the regulations and to provide input and be able to influence those regulations.

If the member is suggesting that for the public to provide input and to be knowledgeable is redundant and unimportant, just say so, because that's what your actions

are clearly indicating.

I know the member wasn't here as a member during that G20 fiasco, but from what I understand she was employed with the Liberal Party, so that ought not to be forgotten. A number of the other members were here for the Ombudsman report on that.

There is a difference between a policy—a policy is not an obligation. Statutory obligation is what this amendment does, and we're fully supportive of it on the opposition side.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr.

Any further—Madame Naidoo-Harris.

Ms. Indira Naidoo-Harris: I just want to say that the government understands the members opposite's feeling that it's important to ensure sufficient time for public consultation. We certainly agree with that. We just feel that this is already captured. There is already a government policy requirement to post both the minister's and the LGIC's regulations online for 45 days, so there is sufficient time.

The Chair (Mr. Shafiq Qaadri): Any further comments? Madame Gélinas, then Mr. Hillier.

M^{me} France Gélinas: I am convinced that the member can read, but I'm not convinced that she can listen.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: I find this absolutely amazing. Here we are, creating law, and all we hear from the government side is, "Well, we feel this and we feel that." We're creating legislation. This isn't about feelings; this about the law. Somebody is not going to go in front of a court and say, "I feel the law should be like this." It's what is the law. The law deals with facts, not feelings. We're creating facts, not legislating feelings.

Once again, contrary to the member's assertion, the way the act is written right at the moment, there is no requirement for the government of the day—this day or someday in the future—to have public consultations, to have public notifications or to encourage and permit

people to be involved in their democracy; this is not just the Liberal Party's democracy. Thank you.

The Chair (Mr. Shafiq Qaadri): Any further comments before we proceed to the vote on NDP motion 25?

Mme France Gélinas: Recorded.

Ayes

Gélinas, Hillier, Yurek.

Navs

Berardinetti, Delaney, Martins, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): I declare NDP motion 25 to fall.

Shall section 16, schedule 2, carry? Carried.

To date, we have received no amendments for schedule 2, sections 17, 18 and 19. May I consider them en bloc? Shall they carry? Carried.

Shall schedule 2, as amended, carry? Carried.

Again, we have not amended or added/subtracted to sections 1, 2 or 3. May I consider them en bloc? Shall sections 1, 2 and 3 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 119, as amended, carry? Carried.

Shall I report the bill, as amended, to the House?

Mr. Randy Hillier: No.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier, are you asking for a vote or simply expressing your feelings?

Mr. Randy Hillier: I'm calling for a vote.

The Chair (Mr. Shafiq Qaadri): You actually want a vote?

Mr. Randy Hillier: Yes.

The Chair (Mr. Shafiq Qaadri): Fine. I will ask for a vote. Shall I report the bill, as amended, to the House? Recorded vote?

Mr. Randy Hillier: Yes.

Ayes

Berardinetti, Delaney, Martins, Naidoo-Harris.

Nays

Gélinas, Hillier, Yurek.

The Chair (Mr. Shafiq Qaadri): I thus shall be reporting the bill, as amended, to the House.

There is no further business before the committee. The committee is adjourned.

The committee adjourned at 1549.





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Official Report of Debates (Hansard)

Thursday 2 June 2016

Journal des débats (Hansard)

Jeudi 2 juin 2016

Standing Committee on Justice Policy

Rowan's Law Advisory Committee Act, 2016

Workers Day of Mourning Act, 2016

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 2 June 2016

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 2 juin 2016

The committee met at 1241 in committee room 1.

ROWAN'S LAW ADVISORY COMMITTEE ACT, 2016

LOI DE 2016 SUR LE COMITÉ CONSULTATIF DE LA LOI ROWAN

Consideration of the following bill:

Bill 149, An Act to establish an advisory committee to make recommendations on the jury recommendations made in the inquest into the death of Rowan Stringer / Projet de loi 149, Loi créant un comité consultatif chargé d'examiner les recommandations formulées par le jury à la suite de l'enquête sur le décès de Rowan Stringer.

Le Président (M. Shafiq Qaadri): Chers collègues, s'il vous plaît, asseyez-vous. Nous voulons commencer notre réunion, congrès, conférence. J'appelle à l'ordre cette séance du Comité permanent de la justice.

Colleagues, I call this meeting of the justice policy to order. It is very good to see you after some level of absence.

We have a number of presenters before us. I believe that we are going to start via teleconference with regard to Bill 149, An Act to establish an advisory committee to make recommendations on the jury recommendations made in the inquest into the death of Rowan Stringer.

MR. GORDON STRINGER

The Chair (Mr. Shafiq Qaadri): We are, as I understand, linked with Mr. Gordon Stringer via teleconference. Mr. Stringer, are you available?

Mr. Gordon Stringer: Yes, I am.

The Chair (Mr. Shafiq Qaadri): Thank you. This is Dr. Qaadri, Chair of the justice policy committee. You have a number of MPPs from all three parties before you. You have, sir, 10 minutes in which to make your opening remarks, to be followed by questions in rotation: three minutes, three, three.

Please go ahead.

Mr. Gordon Stringer: Thank you very much. I'd like to extend my gratitude for the efforts that have been made to allow me to make this address. I know that there have been some things that have happened very quickly to allow me this time. I'm not really sure as to how the protocol of these things works, so I'm just going to talk.

I bring to the table today what I think is a unique perspective. I'm not speaking to you as a medical expert. I'm not speaking to you as a sports expert. I'm not speaking to you as an educational expert. I am speaking to you as a parent, as a father and as, I believe, the only father in Canada—one of the few in the world—who has lost a child to a rare thing called second-impact syndrome, which is multiple undiagnosed concussions in quick succession that cause a catastrophic brain injury.

It hasn't been lost on my wife and me that it is a rare occurrence, but it's one that we hope will not occur again in Ontario, Canada or even the world. As we learned in the inquest into our daughter's death-which, by the way, ended one year ago tomorrow with 49 recommendations from a very astute jury, who showed to us throughout the two and a half weeks of testimony that they paid very close attention to all the experts who were there. They asked astute questions. They asked probing questions. They asked difficult questions. They came out with 49 recommendations as to how Ontario as a province, but also various organizations within the province and outside the province, should respond to this situation. My expertise is unique in the sense that I've had to live for the past three years learning more than I thought I would ever have to about concussions and their consequences.

We learned from the inquest also that a bill on concussions died on the legislative agenda when government was prorogued in 2012. This was hard to hear as the timing of that was a few months before Rowan's demise, and we were left to wonder whether that particular legislation may have made a difference to Rowan.

We also look at that as an opportunity. We've been given a second chance here. It's not often in life that you're given second chances. This is a second chance for the Legislative Assembly of Ontario to act and to bring into place programs, educational pieces and research that will make a difference to the lives of children, athletes, coaches, parents and the medical community in Ontario around concussions and their potential—deadly, in rarer cases, but in not-so-rare cases, the chronic debilitating effects that can happen.

It's a chance for Ontario to show leadership in this area in Canada. I've spoken often over the last three years regarding how Canada has no concussion legislation in place, and yet our neighbours to the south, all 50 states, have something in place. Some of those states are already in their round of revising their initial laws that

they put in place, learning from what worked and what didn't work. This is an opportunity for Ontario to look at what our friends to the south have done and what they have learned and make Ontario a best-in-class jurisdiction in North America and, indeed, the world with respect to concussion education, awareness, treatment and research.

What I've also had the privilege of, in the last year especially, since the conclusion of the inquest into Rowan's death, is learning the depth of medical expertise that we have available to us in Canada. I'm going to miss a few, but people such as Dr. Charles Tator and Dr. Michael Strong, Dr. Jha, Dr. Nick Reed, Dr. Shannon Bauman—

The Chair (Mr. Shafiq Qaadri): Mr. Stringer, just to inform you, Dr. Charles Tator is very attentively listening to you right now. Go ahead, please.

Mr. Gordon Stringer: That's fine. I don't have anything bad to say.

Laughter.

Mr. Gordon Stringer: Here at CHEO in Ottawa, we have Dr. Roger Zemek, Dr. Michael Vassilyadi and Dr. Kristian Goulet. This is just in Ontario—people who can provide advice on the need to receive the right medical care at the right time from the right providers.

I do hope that you will put this bill forward and that the Legislature of Ontario will pass what we're calling Rowan's Law, and we can start with this committee on that road to making Ontario a best-in-class jurisdiction for concussions and concussion care.

Thank you for your time.

1250

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Stringer. I will now offer the floor to the honourable Lisa MacLeod, MPP for Nepean–Carleton, of the Progressive Conservatives. She has three minutes in which to ask questions and comment. Ms. MacLeod.

Ms. Lisa MacLeod: Thank you very much, Chair.

Welcome, Gordon, and I know Kathleen is probably beside you. It's been a long journey. You came to me about a year ago this June and we didn't know where to start. This bill will become law on Tuesday due to the efforts of you and your wife, your strength and your courage, and the wonderful partnership that has developed in this assembly with John Fraser, Catherine Fife, myself and all of our colleagues.

It's a simple bill. It's a bill that effectively establishes a committee to implement the provincial recommendations from the coroner's inquest.

I really don't have a question for you, Gordon. We speak every day. I just—it's been a long journey and a

very emotional one, and I'm very proud of you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. I offer the floor now to Ms. Catherine Fife, MPP for Kitchener-Waterloo, of the NDP. Three minutes.

Ms. Catherine Fife: Also honourable.

The Chair (Mr. Shafiq Qaadri): Yes, and very honourable. Très honorable.

Ms. Catherine Fife: Right, Gordon?

Gordon, I just want to point out that I do appreciate you taking the time, and I know Kathleen is also there with you. Gordon, this would be an opportunity for you to share any concerns you have about, perhaps, timing.

The legislation is pretty clear, but is there any hesitation with the way that it is crafted right now or could you perhaps share any of your concerns that may take us off track? Because this is your opportunity to say what you think is very strong about the legislation, but perhaps also to identify any pitfalls going forward.

Mr. Gordon Stringer: I feel the bill has been crafted very well. I like the idea that there will be four ministries involved on the committee. A concern that I have is that we do actually get the right expertise advising the committee.

For my family personally, the pieces that mean the most to us are the pieces that speak to educating students, athletes, parents and coaches in school-based and non-school-based sports. That's the part that's closest to our hearts because of the situation with Rowan. It also will allow us to start on the road to changing a culture in sports that I think needs to be changed, this idea that it's stronger to play through injuries than it is to admit that you need to stop.

Ms. Catherine Fife: Thank you, Gordon. I have no

further questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Fife. Now to our colleagues in the government. Mr. Fraser.

Mr. John Fraser: Thank you very much, Mr. Chair.

Gordon and Kathleen: Thank you again for taking the time this afternoon and for all that you've done. It's not easy to be reminded of difficult things, but you've worked with a purpose that would make your daughter very proud. I just wanted to restate that again. I'm very thankful that your member, Lisa MacLeod, brought this forward to both Catherine and me. It's a privilege to be part of getting this bill through the Legislature and we're almost home on getting the bill there, which feels really good.

I just want to follow up on what Catherine—MPP Fife—said with regard to any concerns with the legislation. You mentioned "best-in-class," and one of the things that I thought might be something, when we looked at it originally, is going forward on sort of emphasizing specific legislation and broader best-practice policy approaches inside government and whether that would be something that you would think would be a positive thing. I don't know if it's broadening or emphasizing the mandate.

Mr. Gordon Stringer: When I talk about best-inclass, policies and procedures are fine, but to me, it's the real front-line delivery of those education pieces—the recognition and removal, having consistent protocols in place across the province so that no matter what sport you're in, no matter what activity you're involved in when a concussion happens, you're going to receive the same process with respect to identification, management

and treatment, so that you can return to a normal life. I think that, really, is what is most important in my mind. Policies and processes are good, but it really is the actual delivery of those things that is paramount.

Mr. John Fraser: Thank you very much, Gordon. I think we just ran out of time. Thanks again for being on the phone.

Mr. Gordon Stringer: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Stringer, on behalf of all members of the committee, not only for your testimony today but your devotion and dedication to this entire process. On behalf of the justice policy committee of Parliament, we thank you.

DR. CHARLES TATOR

The Chair (Mr. Shafiq Qaadri): Colleagues, we'll now move to our next presenter. Just before I offer the floor to him, I think I would be remiss if I didn't attempt to introduce professor, doctor, chairman of the department of neuroscience, one of my former professors in neurosurgery at the Toronto Western Hospital, one of Canada's most distinguished physicians, the honourable Dr. Charles Tator.

Dr. Tator's contribution to the field of neurosurgery, spinal cord management, head injury management—and, by the way, thank you for writing my references for an internship at Toronto Western—amongst many, many other accomplishments and accolades. We salute you. I'm feeling the pain of the fact that your name is so bare there, because the number of titles both before and after can only begin to do justice to your contribution to this field.

I was just chatting with him earlier. No journal article could be written in the field of neurosurgery or spinal cord management without at least one reference, if not more, to Professor Tator.

So, sir, it's an honour and privilege to have you before us. As you've seen the protocol, you have 10 minutes in which to make your presentation—

Mr. Bob Delaney: Chair?

The Chair (Mr. Shafiq Qaadri): Yes?

Mr. Bob Delaney: Just a point of a privilege.

The Chair (Mr. Shafiq Qaadri): Sure.

Mr. Bob Delaney: You passed handily, right?

The Chair (Mr. Shafiq Qaadri): Well, I think that's entering into doctor-patient confidentiality there, Mr. Delaney, but thank you.

Professor Tator, the floor is yours.

Dr. Charles Tator: Well, thank you very much. What a great introduction. It's also a privilege to be here and to have such an audience of MPPs. It's lovely. Gordon, are you still on the line? To speak after Gordon is also a privilege, because he said it so well that I almost don't have to be here. But having prepared this, I'm going to go ahead with it.

Concussions are a significant public health issue in our country and in our province. My credentials have already been told to you, but I would just like to emphasize that

this issue of catastrophic injuries in sports and recreation has been exercising me, personally, for about 40 years. I think we need to say right up front that my interest is in encouraging kids and youth to actually play sports. I don't want to turn them off sports, but I do want to make sure that they are safe when they are doing so.

We know now something about concussions that we didn't know before: that they are so frequent and that they can be very serious, with 200,000 or so in our country and the fact that not everybody gets better from a concussion.

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The old thought was, "Just suck it up. You're going to get over it," but our research is now showing otherwise. In fact, we now think of concussion as not just the acute concussion, not just the knockout or the injury on the field, but what happens afterwards. We call that the concussion spectrum of disorders.

Some of these disorders are very significant, as you can see on this list. Rowan Stringer had the second item, but there are other serious issues about concussion that we have come to recognize.

All of this creates a significant public health concern. There are very good websites from which people can get additional information. In the handout, I've listed a couple of them.

We have a much better understanding of why concussion occurs: with a jiggle of the brain within—so if one hand is the skull and the other hand is the brain, it's the jiggle of the brain within the skull that causes concussion. That's precisely why helmets don't protect against concussion, because the brain still jiggles, and no one has created a helmet that prevents that jiggle. So we have to be smarter than just putting helmets on kids.

Concussions in sports are especially a problem—in collision sports most dramatically, like hockey, football and rugby—because here is the issue of repetitive concussion. What we've learned is that it's the repetitive concussion that can cause difficulties, including late brain degeneration.

I mentioned that almost everybody recovers, but in fact, not everybody recovers. There's still about 10% who continue to have problems from concussion. Rowan is in that 10%. We know about what the incidences are, we know who is more susceptible—for example, it is now quite definite from research that women are more susceptible to concussion than men. We don't know why. We suspect that there is a significant genetic effect. We do recognize the role of pre-existing conditions, like if you have migraines or depression before concussion, you're certainly going to have them after.

The problems are that there are just too many in our province and ways of preventing them have not been implemented. In spite of all the advertising campaigns, in spite of all the work that we've done in various injury prevention programs like ThinkFirst and Parachute now, there are still too many Ontarians who don't really understand what it is about concussion and why they should be concerned about it. These shortcomings that

have been recognized so exquisitely by the Stringer family should inform our behaviour. I'm really delighted to see that this legislation that we're contemplating is almost there.

The Chair (Mr. Shafiq Qaadri): Professor Tator, you are at your halfway mark, just to let you know. Five minutes.

Dr. Charles Tator: Okay, thank you, so I'm going to skip over these two. Thanks for that.

We do have major benefit from international consensus conferences that inform our decisions. These aren't just drawn out of the air, like a kid should see a doctor, for example, and that the kid should be removed from the game or practice. These are expert opinions that are coming with international endorsement. These consensus statements are now available to us. It's up to us, as Gordon said, to make sure that they get implemented.

We now understand more fully about how to integrate a kid into the classroom, for example. We didn't really have an appreciation of what accommodations are required, and parents went through tremendous trauma with their kids on their way back to school, with nobody knowing quite how to deal with them.

We have lots of information that's available for non-doctors—like for coaches, trainers and teachers—but it's not properly and fully disseminated. So these guidelines are available. We know they're complex. They need to be individualized. Accommodations are necessary at the school level.

Gordon has mentioned that all 50 states beneath us have some form or other of concussion legislation. He reminded us of the bill that died in 2012. We do now have PPM 158, which I'm very proud of. I put down "Yeah, Ontario!" purposely because we are really the only province now to have that. So all 72 school boards in Ontario are now developing concussion policies as a requirement from the Ministry of Education. That is a definite improvement. That was not in place when Rowan had her concussion. We are ahead of all the provinces. The federal government is now looking at the issue of concussions.

Let's concentrate now on what affected Rowan. It's quite amazing that we are faced with this rare entity called second-impact syndrome, which she unfortunately had, which took her life. This syndrome is completely preventable, by preventing the second hit. We must take this opportunity to protect our children and youth.

You see here a list of those who have either died or ended up with major damage because of second-impact syndrome. This is the brain of a hockey player, published in the Canadian Medical Association Journal. You can see those black streaks in the brain stem—I'll put the arrow on them. Those are the streaks of blood that you don't wake up from; that's permanent coma.

So when we learned at the inquest, and I had a special view of the inquest, having been asked by the coroner to be the external examiner—

The Chair (Mr. Shafiq Qaadri): About a minute left, Professor Tator.

Dr. Charles Tator: We learned that she did have two concussions prior to the fatal blow, and she accurately texted this, which we only found out about by examining her cellphone. When the inquest showed us that she and her friends had no formal education, none of the adults knew about concussion and its ramifications, and she did not tell anybody about it. So this was like a perfect storm.

But fortunately, her parents didn't leave it at that. They developed a campaign, together with Lisa MacLeod, Catherine Fife and John Fraser, so we now have a second chance, as Gordon so exquisitely said—

The Chair (Mr. Shafiq Qaadri): Thank you, Professor Tator. I now offer the floor to the honourable Catherine Fife of the NDP.

Ms. Catherine Fife: Dr. Tator, I'd like to give you the opportunity to finish your presentation. Do you have anything else to add?

Dr. Charles Tator: Well, the only thing I was going to add, which I thought Gordon might have said, was that as we envisioned this at the inquest, Rowan's Law is actually the next stage. So let's get the committee in place, and that's currently our job now over the next few days, and then it's the committee that has to develop the concussion legislation. I personally hope that it is going to be legislation and it's not going to be something less effective.

Ms. Catherine Fife: Okay. It's really interesting, because Gordon talked about shifting the culture of sport. There's a lot of commercial interest out there right now around concussion management. I don't know if you want to comment on that, but I've been approached by several businesses—once this became very political and very knowledgeable. People are trying to design systems to cope with it in a very commercial way. Can you comment on that, Dr. Tator?

Dr. Charles Tator: I agree with your concern because I am also bombarded by advertisements and marketing from commercial enterprises which are looking to capitalize on the concern about concussion. Most of the material that they develop, that they put on their websites, that they send around to prospective patients, is correct, but not all of it is correct. I think it's becoming increasingly confusing for parents, especially, to figure out who's right and who's wrong. Perhaps that should be included in the committee's work that decides on whether or not to proceed with legislation.

Ms. Catherine Fife: Yes. There's no quick fix—

Dr. Charles Tator: There is no quick fix. They have to be evaluated individually.

Ms. Catherine Fife: And the best model is prevention.

Dr. Charles Tator: Prevention is the only cure right now because, in fact, our treatments are not very effective. We are looking for better treatments. That's a lot of what I do personally. So far, our treatments for the concussion spectrum of disorders are rather dismal—except for prevention.

The Chair (Mr. Shafiq Qaadri): We'll go to the members of the government. Ms. Indira Naidoo-Harris.

Ms. Indira Naidoo-Harris: Thank you, Dr. Tator, for coming in. I want to start out by just saying that it is really an honour to be speaking with you today about such an important and emotional subject, I know, for many of us.

On behalf of myself and my family and, I think, others of us who are here who are parents—my kids play soccer, they play rugby, they played hockey, figure skating, competitively, and so on. The fear of concussion is something that's always on my mind and always on our minds. On behalf of those of us who are parents, a big thank you for your tireless efforts and for your groundbreaking work and research in concussions and concussion management.

Dr. Charles Tator: Thank you.

Ms. Indira Naidoo-Harris: Dr. Tator, you've talked about a lot of things, but probably one of the most important things is that your work has really transformed our understanding of spinal cord injury. You've looked at what we've done. You've already said that Ontario is ahead of all provinces in this. You clearly have an interest in ensuring that we go far enough and do the work we need to do. So I'm going to ask you something you've touched on already but that I think is important to get on the record: What next steps do you think our government should be pursuing to prevent deaths like Rowan's tragic death? Also, what do you think about the idea of expanding, for example, the committee's mandate? Whether it involves education, as you touched on, awareness, prevention, training, all of those things, just give me a sense of what you think we should be doing next.

Dr. Charles Tator: I really feel that we should be heading towards legislation—so the original concept of Rowan's Law being Rowan's legislation. What we need to legislate is that everybody associated with sports should be educated about concussions. That includes teachers, trainers, referees, parents, the participants themselves. We really need a concussion team effort to have everybody informed.

The word "culture" was used, and I think that's a very important issue here: We do have to change the culture. We have to encourage the athletes themselves to come forward. We have to convince the athletes themselves that it's in their best interests if they want to keep playing the sport. We want them to keep playing, but we want them to play safely, so that means they have to reveal their symptoms. Sometimes, only when they reveal their symptoms does it become apparent that they've actually had a concussion. Concussion is called the invisible injury for a reason.

The Chair (Mr. Shafiq Qaadri): The floor now

passes to the Conservative side. Ms. MacLeod.

Ms. Lisa MacLeod: Welcome, Dr. Tator. Thank you very much for endorsing this piece of legislation early on. I also want to say thank you for your role in the coroner's inquest. As you're aware, and we have all become aware, there are no easy baskets that we can take coroner's inquest recommendations and then turn them into law. I think that this is the best process that we could come up with in order to start reviewing those recommendations that you and your colleagues made and implementing them across government. If that, as you suggest, requires additional legislation down the road, at least we'll have the right people around the table.

I'm just wondering if, in your experience during the coroner's inquest, which would have ended a year ago tomorrow, there were any things additional, since the time of Rowan's passing, that you would recommend that was not included in the recommendations at the time.

Dr. Charles Tator: That's a very good question. The answer is no, because we were all very careful in trying to put the issues out on the table for everybody to view.

Fortunately, the coroner's jury was quite fantastic in being able to absorb all of that information that was thrown at them over the two-to-three-week period and get it down on paper.

I think we have to be very complimentary towards Dr. Louise McNaughton-Filion, who was the presiding coroner, because under her direction the jury performed spectacularly in being able to appreciate what was before them and grasping the important issue. I think one of the best days of my life was when I read the jury verdict, because I really had the feeling they listened and they got

Ms. Lisa MacLeod: I'm really happy to hear that. My final question is, would you like to sit on this committee and are there any other people that you would recommend to be part of this, as a panel of experts?

Dr. Charles Tator: Well, I volunteer, if I'm—

Ms. Lisa MacLeod: It comes with lots of pay and 0%

Dr. Charles Tator: If I'm asked, I will be very pleased to serve. Gordon mentioned a number of other experts in his talk. I think Ontario—and elsewhere in Canada—is blessed with a lot of people who know what they're talking about with respect to concussion, so I do feel there's a lot of expertise-

The Chair (Mr. Shafiq Qaadri): As fearful as I am to interrupt a former professor, I thank you, Ms. MacLeod, and thanks to you, Professor Tator, not only for your presence today, your volunteering, but your extraordinary number of decades of service in neurosurgical management of disease and well-being. I thank you on behalf of the Parliament of Ontario.

Dr. Charles Tator: You're welcome.

BARRHAVEN SCOTTISH RUGBY FOOTBALL CLUB

The Chair (Mr. Shafiq Qaadri): Our next presenter is Barbara Gillie of Barrhaven Scottish Rugby Football Club, who is available to us by teleconference. Ms. Gillie, are you there?

Ms. Barbara Gillie: Yes, I'm here. Can you hear me? The Chair (Mr. Shafiq Qaadri): Yes, I think we can hear you. We might increase the volume.

You are now going to speak before the Standing Committee on Justice Policy. As you know, you have 10 minutes in which to make your introductory remarks, followed by questions in rotation. Please begin.

Ms. Barbara Gillie: Thank you. Good afternoon. My name is Barbara Gillie. I'm speaking on behalf of the Barrhaven Scottish Rugby Football Club and as a coach and former rugby player.

I would like to start by thanking the Standing Committee on Justice Policy for giving me the opportunity to speak today. It's a privilege to be able to address you. Thanks to Lisa MacLeod for introducing this bill to the Legislature and her dedication to having it passed, and her co-sponsors, MPP John Fraser and MPP Catherine Fife, for their continued support of the bill.

I'd like to also thank Kathleen and Gord Stringer for continuing to tell Rowan's story, for their incredible strength and determination to ensure this bill is passed, and being tremendous advocates for concussion education and awareness, and for sport. They've given immense support to rugby and our club has been enriched by having them in our rugby family.

Rowan Stringer was a young, outgoing, loving 17-year-old girl who loved to play sports, hang out with her friends and family, travel and was due to graduate from John McCrae high school. After graduation, she would be heading off to study nursing. She wanted to help others, especially children. She was looking forward to playing summer club rugby at Barrhaven Scottish. She had her whole life ahead of her, but in May 2013, a terrible tragedy happened: She sustained a head injury in a school rugby match. She never regained consciousness and died. The doctors confirmed she had sustained massive brain swelling after succumbing to complications from multiple undetected concussions, or second-impact syndrome.

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At the coroner's inquest, it was revealed that before what would be her last game, she thought she might have sustained another concussion, but wasn't sure. She didn't have the education or knowledge about concussions and their potentially dangerous effects if untreated; neither did her friends. She didn't talk to her parents. The upcoming game was an important one. She was the captain, and she didn't want to let her team down. If only there had been legislation in place that provided Rowan and her friends with concussion education and awareness.

I met Rowan in the summer of 2012 when I was head coach for the junior girls' team at Barrhaven Scottish. She hadn't played rugby very long, but she loved rugby and really wanted to learn how to be a better player. She learned quickly, and I could see her, in training and games, passing on what she learned to others. She became a leader and a role model. She always had a big smile on her face and made people laugh. Her death was a tragic accident, but it was preventable.

Since her death the Stringer family, along with other advocates for concussion awareness, have been working to bring about change and introduce concussion measures and protocols so that it will be safer for all who play sport. I'm proud to be part of the Rowan's Law group, advocating for it to be passed.

Currently, there is no concussion legislation in Ontario or any other province or territory in Canada, and concussion protocols vary between jurisdictions and cities. This is in contrast to the United States, where all states have laws on concussion. The previous bill on concussion in Ontario failed on the table in 2012. Had it passed, I believe many athletes would be better off right now and others, like Rowan, might still be alive.

Some call concussions the "invisible injury" because its symptoms aren't always easy to recognize; many are either not treated properly or not treated at all. When you break a bone or sprain a joint, you go to the hospital, you see a doctor and you're treated. But when you injure your brain, you can't see the damage. You can't put it in a cast. It's very important that everyone involved in sport takes action when there is a suspected concussion. All athletes with suspected concussions should be removed from sport and treated by a health care practitioner who has specialized and up-to-date concussion training.

Research into concussions, as you've probably heard, has proven that of reported cases each year, 10% to 30% of athletes will have sustained a concussion, but the reality is that many cases of concussion or suspected concussion are not reported, and this figure may be upwards of 50%; and although most physical symptoms are resolved within seven to 10 days post-concussion, not all neurological symptoms are, and many athletes will still perform poorly on neurocognitive and functional testing despite being symptom-free.

In June 2015, a coroner's inquest was held into the death of Rowan Stringer and concluded with 49 recommendations for enhanced concussion awareness and treatment to be implemented across different levels of government and multiprovincial ministries. Rowan's Law is based on these 49 recommendations from this inquest and four cornerstones of the law have been established.

With the enactment of Rowan's Law, these recommendations and cornerstones can be implemented. Concussion education, awareness and protocols can be aligned so that the same messages are being conveyed to all involved in sport. Rowan's Law can prevent serious brain injuries in athletes and, more importantly, prevent another death from happening.

Without Rowan's Law, athletes, parents, coaches, officials and others involved in sport will continue to be confused and uneducated about concussion—how to properly treat them and how to recover from them. Athletes will continue to be permitted to play sport and go to school too soon without proper treatment, with potentially serious consequences. This must not be permitted to happen.

It's vital that all people involved in sport are aware of the realities and dangers of concussions, that there is proper education, awareness, prevention initiatives and protocols in place for concussions, and that there are consistent strategies for return-to-play and return to learn. We must have a law that protects the health and welfare of all athletes.

It is said that it takes a community to raise a child. To me, this means keeping them safe and healthy. Rowan's Law will help us do that. It's not just a coach's or a teacher's responsibility to ensure athletes are safe, it's everyone's responsibility—players, parents, officials and everyone else involved in sport.

Rowan's Law has received and continues to receive high-profile endorsements from organizations across Canada and around the world and is supported by renowned neurosurgeons and also by professional athletes: former NHL star Eric Lindros, former rugby internationalists Al Charron and Jamie Cudmore and many more too numerous to mention today.

What else is needed? A change in culture. A change in sport culture also needs to take place—a revolution of sorts. We all need to stop saying, "Suck it up, you'll be fine," or "Wow, you got your bell rung, but you'll be okay, go back in there," when an athlete has a suspected concussion. We all need to stop putting pressure on athletes to play when they have a concussion or are not fully recovered from a concussion.

Instead, we should be advocating positive actions and ensuring that everyone involved in sport knows and supports that it's okay to miss a training session or a game, even if it's a big game; that if an athlete has a suspected concussion, they will be pulled from training or playing; and for athletes to self-identify their injuries. We should start using new sayings, like, "When in doubt, sit it out." The new norm needs to become, "I believe you might have a concussion; go see a doctor," and, "You can't train or play until you've seen a doctor and are cleared to return." An athlete's life is more important than the game.

As a player and coach of various sports throughout my life, including rugby, I know first-hand that injuries and concussions happen, and that it can be difficult to identify the signs and symptoms of a concussion. As a former varsity, club and representative rugby player, I know very well the pressures put on athletes and the pressure that we put on ourselves to win trophies and medals. It's not an easy decision to pull yourself off a pitch when you're injured, especially in a crucial game, but nothing is more important than your own safety and welfare. As a coach, the decision is an easy one: Take the player off when they are injured or you suspect a concussion.

I believe Rowan's Law is imperative to making sport safer for all. It will provide vital education and awareness about concussions, treatment and management of concussions, and protocols for returning to play for all involved in sport. Players must be removed from play when a concussion is suspected and not return to play without a doctor's letter.

Barrhaven Scottish RFC wholeheartedly and completely supports Rowan's Law. Player welfare is the most important aspect of any sport. Our club coaches have taken the mandatory World Rugby online certifications

Rugby Ready and concussion management. Our club follows the World Rugby and Rugby Canada concussion management protocols and guidelines. We have also adopted the policy of, "When in doubt, sit them out."

We are thankful to MPP Lisa MacLeod, MPP John Fraser and MPP Catherine Fife for supporting this bill and ensuring it was sent to your standing committee for a public hearing and on to the final debate and vote in the Legislature.

We request that the Ontario Legislature vote in favour of passing Rowan's Law on June 7, and that this critical piece of legislation is enacted so that no other young athlete suffers from the long-term effects of a concussion or another family like the Stringers has to go through what they did and live without their loving daughter Rowan.

In closing, on June 7, the most important and critical step forward in making sport safer for all athletes needs to be taken. It is in the Ontario Legislature's power to vote in support of Bill 149 and enact Rowan's Law. It is in the Ontario Legislature's power to make history by passing the first private members' bill that is cosponsored and supported by all three parties. And it is in the Ontario Legislature's power to enact Canada's first concussion law and make Ontario a groundbreaking jurisdiction. Following the passing of Rowan's Law, it is our hope that all provinces and territories will soon pass a similar law.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Gillie. Thanks for your expert timing as well. The first round of questions goes to Mr. Potts of the government side; three minutes.

Mr. Arthur Potts: Thank you very much for speaking to us, Ms. Gillie. This was quite a moving presentation. I know it's been very emotional for you to bring the perspective of the Barrhaven Scottish rugby club, who Rowan Stringer played with—my daughter Robin also played rugby with the Toronto Scottish here in Toronto. It was a tough thing to watch her play, as a father. I appreciate very much that there are new protocols in place at the Ontario rugby level, which is trying to put these new protocols in so that people have awareness.

Ironically, when we were debating this bill at second reading—I was sitting in the House at the back; I didn't speak to it. But I play hockey on a regular basis. I'm in my late fifties and I play hockey. On the Sunday before we debated this on the Thursday, I'd been hit and fallen and hit my head. I wasn't really thinking about it, but as Lisa MacLeod was reading through some of the associated symptoms, I realized, "My God, I was tired. I had this nagging headache." As a result of that education, I went and saw my family doctor the next day, on the Friday constituency, and took a month off playing hockey, again just out of exactly the considerations that we've raised here.

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Now, you went over very quickly the rugby club's new protocols. I wonder if you wouldn't mind just elaborating again on the training that now goes on, the learning. Even in the absence of this lobbying past, we know that you've provided incredible education to the people in your club. I wonder if you might just expand on that a little.

Ms. Barbara Gillie: Sure. As part of the certification program by Rugby Canada, all coaches need to have attended and either be certified or working towards their certification. As part of that rugby certification, there are modules and continuing education development courses that all coaches must go on.

So before a coach gets on a field, they must undertake a free online course called Rugby Ready. It gives you background and information about playing rugby and coaching in rugby, but also the new concussion management module, which gives you information about concussions and what to do in cases of suspected concussions.

This initiative by Rugby Canada and also their Play-Smart player welfare program, which is a national initiative, is starting to become one of the leading programs in the world of rugby to follow, and other countries are starting to take this on board.

Mr. Arthur Potts: That's fantastic. Thank you again for your advocacy, and condolences on your loss.

Ms. Barbara Gillie: Thank you.

The Chair (Mr. Shafiq Qaadri): To the PC side: Ms. MacLeod. Three minutes.

Ms. Lisa MacLeod: I'm delighted to know that I diagnosed Arthur Potts's concussion. I hope Charles Tator is listening to that. I could be a doctor myself. I don't often play one, but when I do, it's in the Legislature.

Barb, it's great to have you on the line. I'm just going to mention to folks that we have a grassroots Rowan's team at home in Barrhaven, and you're obviously a big part of that, as is the Barrhaven Scottish, which you should be commended for. You are one of the few sports organizations that has zero tolerance for returning to play while there's a concussion. It's been really amazing. We joined with the Stringer family. We would meet once a month. We actually met—everyone here should know—on the one-year anniversary of the beginning of the inquest. Our entire team at home went out and we celebrated.

You should also know that this Saturday we will dedicate the Barrhaven Scottish rugby pitch to Rowan Stringer at 12:30. Our entire team will be there. I can't thank the city of Ottawa enough. Not only have they endorsed this bill unanimously, but they also made sure that renaming occurred.

Then, on next Tuesday, Barb and our entire team are coming up from home, as we watch this historically happen on Tuesday. I hope all members of the assembly will join us in my office in Room 451 after the vote and before the vote as we celebrate this historic bill. Barb?

Ms. Barbara Gillie: Yes, Lisa?

Ms. Lisa MacLeod: How are you feeling?
Ms. Barbara Gillie: Pretty emotional today.

Ms. Lisa MacLeod: Yes. Well, I'm going to see you on Saturday.

Ms. Barbara Gillie: Absolutely.

Ms. Lisa MacLeod: I just wanted to let everybody know what a great job you did. Honestly, that was a fantastic presentation.

Ms. Barbara Gillie: Thank you very much.

Ms. Lisa MacLeod: There was nothing for you to be worried about. If I may just convey not only my thanks to you and to Phil and Gary and the rest of the Barrhaven Scottish, but also to Rugby Canada, who has come out in full support of this bill and has taken on what I believe is the biggest leadership role of any sports organization in this country. So thank you.

Ms. Barbara Gillie: We're proud to be part of the whole group. We support you 120%.

Ms. Lisa MacLeod: Thank you.

Ms. Barbara Gillie: Thanks, Lisa. See you Saturday.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. To Ms. Fife.

Ms. Catherine Fife: Thank you very much, Barbara, for the presentation. It is very comprehensive. For me, one of the strongest pieces that you addressed, though, was the change in culture that is needed in sport. I really like your statement and your suggestion that we start using, "When in doubt, sit it out." I think that's really effective.

But I think we have to be honest that there is a lot of resistance out there to addressing or to turning the other way, if you will, when someone does get injured. You're on the front lines, so to speak. Do you want to address the work that's still before us in shifting the culture?

Ms. Barbara Gillie: Absolutely. I think that a lot of that culture comes down to coach and parent education, and awareness that their behaviour and the way that sport needs to move forward. It needs to move away from this battering each other until you can't get up again and that playing injured is the right way to do it—you know, "You'll be okay." It's fine and well when you break an arm or you tear an ACL like I did and get it repaired, but when you damage your brain, it's not okay.

People have to understand the ramifications of this. In rugby it's a culture of supporting each other as a family and a community. That's what other sports need to take on board: to move forward and address and make the change that, no, it's not okay to put that player back in. They might not be around tomorrow if you do.

Ms. Catherine Fife: Thank you very much, Barbara.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Fife, and thanks to you, Ms. Gillie, for your presentation, your presence and your dedication to this entire process.

ONTARIO ATHLETIC THERAPIST ASSOCIATION

The Chair (Mr. Shafiq Qaadri): We'll now move to our next presenter who would please come forward, Mr. Laskoski and Mr. Robinson of the Ontario Athletic Therapist Association. Welcome, colleagues. You've seen the protocol: a 10-minute opening address followed by questions. Please be seated, and if you have any pres-

entation—I guess you do; it's being distributed. Please begin now.

Mr. Drew Laskoski: Thank you, Mr. Chair. We are very pleased to be here, but this is our first appearance before a committee of the Legislature, so we find this a little intimidating. Please bear with us.

The Chair (Mr. Shafiq Qaadri): You're not referring

to anyone in particular, I presume, then?

Mr. Drew Laskoski: Not yet. My name is Drew Laskoski. I'm president of the Ontario Athletic Therapist Association.

Interruption.

Mr. Drew Laskoski: See, I've been welcomed by horns. That was very hard to coordinate.

I'm also a certified athletic therapist and a registrant of the College of Kinesiologists of Ontario. I practise in Newmarket as the head athletic therapist with a number of sports teams and have a lot of experience in diagnosis and treatment of concussions, primarily from sport injuries but also from vehicle and other accidents.

With me is Mike Robinson, who is a member of the Ontario Athletic Therapist Association board of directors. He's also a certified athletic therapist in Canada, a certified athletic trainer in the United States and is also a registrant of the College of Kinesiologists of Ontario. He is the head therapist with a number of sports teams and is currently a PhD student at Western University in London with a research focus on increasing the reliability of concussion assessment tools.

The OATA represents 847 individuals across Ontario who are practising athletic therapy, or working towards their degree at either Sheridan College or York University and their certification as athletic therapists.

You might find it interesting to know that the profession was in many ways fostered and promoted by the predecessor ministry to today's Ministry of Tourism, Culture and Sport, in order to provide a profession focused on the diagnosis, treatment, rehabilitation and

prevention of sports injuries.

As we have done from day one, we are here on behalf of the OATA to offer our strong support for passage of Bill 149, known as Rowan's Law. I spoke about Mike's and my personal experience with concussions. I venture to say that, other than physicians, athletic therapists deal with concussions more than any other health care profession. That's primarily because of the roles we play in amateur and professional sports. Athletic therapists' qualifications are recognized by the Canadian Olympic Committee to serve on the medical teams of Olympic-level games, including the Pan Am and Parapan Am Games that were held in Toronto last year. Only physicians and specially trained physiotherapists share that recognition.

Most sports teams, whether amateur, professional, secondary school, university or college, have at least one athletic therapist on staff or on retainer. When you're watching an NHL game on television, for example, all of the Canadian professional hockey teams have at least one athletic therapist on staff. So when a concussion occurs

in sports, it's often an athletic therapist who is the first responder. What those athletic therapists do as first on the scene and, subsequently, in their treatment and rehabilitation is obviously critical to recovery.

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As you've already heard, concussions are tough to diagnose. The usual diagnostic tools such as X-rays, MRIs and CT scans don't identify most concussions. Diagnosing a concussion requires in-depth knowledge of the clinical evidence and extensive practical experience. That's why the OATA and our national organization, the Canadian Athletic Therapists Association, and individual athletic therapists such as Mike and I have been called upon by various authorities to help develop and improve concussion guidelines.

I had the honour of joining Dr. Tator and was asked to join his working group that published the document Review of Concussion Recognition and Management

Tools for Concussions Ontario.

Both OATA and CATA have produced guidelines that reflect the latest clinical evidence and recognition and treatment of concussions.

There is no question that a lot of progress has been made in recognizing mild traumatic brain injuries and the importance of proper diagnosis and treatment, but there's still a lot of work that needs to be done. There is still a lot of denial out there by sports teams and by individual players, sometimes motivated by financial or liability concerns, and sometimes by players who believe they can or have to play through a concussion. You would be surprised how many times I still see somebody holding up three fingers in the face of someone who has had his or her bell rung to test whether the person is able to return to play. I think it's safe to say that the clinical evidence is in place and the appropriate diagnostic and treatment protocols are available. Nonetheless, that knowledge has not yet penetrated and percolated everywhere it needs to. Concussions are still being ignored. Concussions are still being improperly, ineffectively and sometimes dangerously treated.

That's why the committee proposed by Bill 149 is so important. The intensive study of the jury's findings and recommendations into the sad death of Rowan Stringer and the translation of those findings and recommendations to augment the existing body of evidence and protocols will help enormously in reducing the number of people who die or become incapacitated from undiag-

nosed or improperly treated concussions.

Thank you again, Chair. We welcome whatever questions the committee may have.

The Chair (Mr. Shafiq Qaadri): Thank you very much for your opening remarks.

We now pass to the PC side. Ms. MacLeod.

Ms. Lisa MacLeod: Drew, that was fantastic. You did a great job. I'm really happy that you were able to come here today. I came across a great photo of you this morning, as we prepare for Tuesday—so I'm looking forward to seeing you there.

I really appreciated what you were saying in terms of taking these recommendations and then having intensive study of them with the committee. Given your experience, would you be interested in sitting on a type of committee like this?

Mr. Drew Laskoski: Always.

Ms. Lisa MacLeod: Do you think it's important that we have strong representation from sport around the table as well?

Mr. Drew Laskoski: I think that without sport there

we're fighting an uphill battle.

I've been involved with junior hockey since 1987. At least now, in the hockey world, people understand: "Concussion? Bad. Don't play." So we've made strides in that. But as long as I've been at it, we still run into problems with players not understanding concussion. More importantly, we have parents who don't understand concussion. I think the only way we're going to combat that is through education and educating at the grassroots level through the schools and with the sports organizations. If I had my druthers, I would make it mandatory, but we live in a democracy, not a dictatorship.

Ms. Lisa MacLeod: Well, some days we challenge

that, in the opposition.

Mr. Drew Laskoski: I have watched CPAC so I

understand where you're coming from.

Yes, I think it will be incumbent upon the committee to at least charge the sports committees or organizations that they're on the hook now, that they need to be cognizant that there are winds of change—and things have to change.

Ms. Lisa MacLeod: Just a final comment: I'm very grateful for the support you have given this bill and me personally. I think the fact that we have got organizations like Parachute Canada and the Ontario Athletic Therapist Association endorsing this legislation brings a great deal of credibility to it, not just on the floor of the assembly but, I think, right across Ontario. So thank you for everything.

Mr. Drew Laskoski: It's our pleasure.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. To Ms. Fife.

Ms. Catherine Fife: Excellent. That has never happened, where the horns went through the entire presenta-

tion, so I think you did a really good job.

I want to go back to your comment that concussions are currently being treated in a dangerous manner. The whole goal of this legislation is to make those recommendations actionable, and we all share in that concern, but going forward, I think the work of the expert committee is going to direct how we best deal with concussions once they occur. I agree with Dr. Tator that prevention is the goal, and I think that's an achievable goal, but we are still going to be dealing with concussions, right? To use a word like "dangerous" around treatment is significant.

Mr. Drew Laskoski: Yes. Right now, there are no guidelines on how to treat concussions. I was fortunate enough to be asked to attend the clinic guidelines on what it takes to call yourself a concussion clinic. It was hosted by the Ontario Neurotrauma Foundation. We were

struggling as to what we need to have in place to be able to treat concussions. If we are expert provider groups and we're struggling with that, how do we convey that down to the user groups without concrete guidelines? From my own experience, the only way that any guidelines have teeth is that they're backed up by legislation. There has to be a cause and effect.

Ms. Catherine Fife: Thank you for that. We have PPM 158 in our school systems, all 72 school boards, but I just don't think it's enough. I don't think it's enough, because the people who are charged with putting that program and policy into play don't have the education and knowledge to bring it in. There are great inconsistencies across the province, and that's why I was so proud to be part of this process. It is historic, especially in this setting. I just want to thank you for coming and sharing your perspective with us.

Mr. Drew Laskoski: It's our pleasure.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms.

Fife. To the government side: Mr. Delaney.

Mr. Bob Delaney: Welcome. I'd like to make a few comments that echo what my colleague from Beaches—East York said and what I am sure my friend from Prince Edward—Hastings would agree with, which is in the vein

of real players do listen to their body.

I played my first game of organized hockey in December 1960, and it would be fair to say that in that era, there was no protection. By the 1970s, there was some protection, but it was optional. By the 1980s, there was still some protection, but when it became mandatory, the quality of the protection improved. By the 1990s, we had mandatory proper protection for most players of most sports. By the 2000s, we were working on the awareness of the problem of concussions, which you called the "denial and the play-through." In this decade, it's about taking action to prevent and treat concussions.

Just as a question to you, in a week in which we lost two hockey players that many of us grew up around, Tom Lysiak and Rick MacLeish, both of whom died too young for men of their era, could you talk a little bit about how the process currently works and if there are additional best practices we should look at?

Mr. Drew Laskoski: Mike is the expert in that stuff in terms of research. I'm more clinically oriented. I

would defer to Mike.

Mr. Mike Robinson: Sure. Just to clarify, you're talking about the process of assessing a concussion or treating it?

Mr. Bob Delaney: A bit of both.

Mr. Mike Robinson: Right now, the process would be when there is either a self-identification or clinically. When I worked in high schools, a lot of times teammates would identify and disclose that to me.

We go through a clinical history. Something that was touched on before is that there are many commercial and free tools that are available out there. That's where my research interest lies because I want to make sure we have the best tools available.

A lot of clinicians will employ various tools, from the publicly available SCAT3, which is being updated in

October in Berlin, to some of the more commercial tools, the ImPACT and the King-Devick. Those aren't designed to be assessment "yes" or "no"; rather, they're designed to provide a clinician information with regard to cognitive function, proprioception and try to almost, for lack of a better word, exploit those symptoms that are coming out in order to form an assessment and eventually a diagnosis.

After that, a lot of clinicians rely on symptom tracking since we don't have a goal-centred test that we can image a concussion; rather, we rely on self-report checklists in order for patients to keep us updated on how they're

progressing-

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Thanks to you, Mr. Laskoski and Mr. Robinson, for your deputation on behalf of the Ontario Athletic Therapist Association.

Colleagues, by order of the House, this committee is in recess till 2 p.m. eastern standard time.

The committee recessed from 1351 to 1400.

WORKERS DAY OF MOURNING ACT, 2016

LOI DE 2016 SUR LE JOUR DE DEUIL POUR LES TRAVAILLEURS

Consideration of the following bill:

Bill 180, An Act to proclaim a Workers Day of Mourning / Projet de loi 180, Loi proclamant un Jour de deuil pour les travailleurs.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I'd respectfully invite you to please be seated so we can begin consideration of Bill 180, An Act to proclaim a Workers Day of Mourning.

ONTARIO FEDERATION OF LABOUR ONTARIO NETWORK OF INJURED WORKERS GROUPS

The Chair (Mr. Shafiq Qaadri): We have one presenter group before us: the OFL—the Ontario Federation of Labour—and the Ontario Network of Injured Workers Groups, represented by Vernon Edwards and Karl Crevar. Welcome. Please come forward.

Welcome, gentlemen. As you've seen the protocol, you have 10 minutes in which to make your opening address, to be followed by three-minute rotation questions. Please do introduce yourselves for the purposes of Hansard. I respectfully invite you to please begin now.

Mr. Vernon Edwards: Thank you, Mr. Chair. I'm Vernon Edwards, director of occupational health and safety, from the Ontario Federation of Labour. I'm joined here by Karl Crevar of the Ontario Network of Injured Workers Groups. I'll be sharing my time with Karl.

The Ontario Federation of Labour is the central labour organization in the province of Ontario. The OFL represents 54 unions and speaks for more than a million workers from all regions of the province in the struggle

for better working and living conditions. With most unions in Ontario affiliated, membership includes nearly every job category and occupation. The OFL is Canada's largest provincial labour federation.

As a province-wide central labour body, the OFL works to develop and coordinate policy as passed at our conventions and by our executive bodies. One of the key roles of the OFL is to try to influence public policies that affect all working people, their families and communities. One of the most important areas of public policy that we try to influence is the prevention of work-related injuries and illnesses.

We welcome the opportunity to make this presentation to the Standing Committee on Justice Policy regarding Bill 180, An Act to proclaim a Workers Day of Mourning. We feel that this act is important, especially in connection with community awareness, creating more awareness about the issue of occupational health and safety, death and injuries that are occurring in every community across Ontario.

We see it as particularly important for the sector known as MUSH, which is municipalities, universities, schools and hospitals. We know from our affiliates that education, hospitals and social services have a particularly difficult time having health and safety issues addressed. Senior officials within those services seem to have a lack of understanding of the responsibilities when it comes to occupational health and safety.

I met with a number of unions with membership in the education sector this morning. We were again discussing the problems that they are having in getting the school boards to recognize health and safety concerns, particularly around violence in the workplace, functioning joint health and safety committees, and good health and safety training.

If schools and hospitals are not safe for the workers, then they're not safe for the students and patients either.

In my almost 24 years at the OFL, I have learned that workers die in ways more horrible than even Stephen King can imagine. For those of you who may not be familiar with Stephen King, he's an American author of contemporary horror and supernatural fiction.

Some of the examples I've experienced over the years:

—a worker pulled through a shredder feet first—no

guarding, no shut-off controls;

—a young man, at the age of 19, on his third day on the job, suffered burns to 90% of his body, and that day, he was the worst burn case Wellesley Hospital had ever seen:

—workers killed in explosions, where there's nothing much left other than bits of bones and charred flesh to put in the casket:

—falls from great heights, such as what happened with Metron Construction Corp. a number of years ago, where four workers were killed and one young man was so badly wounded that he'll probably never be the same again;

—another young worker, David Ellis, whose father and brother have been out there campaigning across

Ontario for better health and safety.

David's brother was here April 7 when second reading of this bill occurred.

Then we see workers die slow, agonizing, painful deaths from occupational diseases and cancers.

The Day of Mourning is the day labour and our community partners come together to remember those who have died as a result of their work. We also recommit ourselves to continuing the fight for the living. It's a challenging task to alter this situation, but if Bill 180 passes, we hope it will generate more discussions in communities across Ontario about the needless and tragic toll occurring in our workplaces. This has to be a part of what will make these workplace tragedies as socially unacceptable as the tragedies caused by drinking and driving.

I participated in a press conference here at Queen's Park when this bill received second reading on April 7 of this year. The Ontario Federation of Labour called for all-party support for this bill. Sitting in the public gallery later that day, I witnessed just that, including a standing ovation for Percy Hatfield. I hope to see the same enthusiastic support for this bill as it progresses through to final reading.

The Chair (Mr. Shafiq Qaadri): Thank you very much. We'll now move to the PC side: Mr. Arnott, three minutes.

Mr. Ted Arnott: Thank you very much for your presentation. Our PC caucus—

Mr. Percy Hatfield: Point of order, Chair: Were they out of time or were they sharing time?

The Chair (Mr. Shafiq Qaadri): No, I'm sorry, you did have more time. I thought you had ceded the time.

Did you want to speak, sir?

Mr. Karl Crevar: Sure.

The Chair (Mr. Shafiq Qaadri): Yes, you have about four or five minutes left. Go ahead.

Mr. Karl Crevar: My name is Karl Crevar. I'm with the Ontario Network of Injured Workers Groups, and I also represent the province on a national basis with the Canadian Injured Workers Alliance. I've been with this organization for 25 years, right from the beginning, advocating for health and safety along with the OFL on a number of occasions. I was very pleased to be able to have the opportunity to be in the Legislature when Percy Hatfield graciously introduced his private member's bill, and I was pleased to see that all party members at that particular time voted for it to move forward.

It is long overdue. We've been advocating for something like this for a number of years because for the workers killed in the workplace, as we started down the road for April 28, the Day of Mourning, that's what it was. We had workers gather at monuments for workers who were killed, remembering not just the workers killed, but also the families who were the survivors.

We are pleased to see that this is going forward, and I would reiterate the words of Vern from the OFL that all-party support be given to this bill. It will send a very strong message to the community that workers do matter. People who are either hurt or killed on the job do matter, and they should be so recognized. They're the workers

who build our country, build our province and build our cities. Therefore, they should have that honour of being recognized on that particular day.

I'll leave it at that. Again, I thank the committee for the opportunity. Vern had asked me to come and say a few words at the last minute; that's why I don't have any paperwork. I don't know, Ted, if you recall, but we brought this issue forward a number of years ago. I'm glad to see it come forward, finally. Thank you very much for doing that.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Arnott, you now have the floor.

Mr. Ted Arnott: Thank you very much for coming today for your presentation. Certainly, our Ontario PC caucus has supported this bill at second reading, and we want to compliment Mr. Hatfield again for bringing it forward. I think it's a bill that should pass into law, and it appears that the government concurs. Hopefully, unless something really strange happens, the bill will be called for third reading before the House rises and pass into law.

You come on an important day. We actually had a minister's statement this afternoon in the Legislature about the Italian Fallen Workers Memorial, which I attended—as he did as well, and a number of other members of the Legislature—a few weeks ago when it was unveiled.

We're all reminded today of the importance of recognizing the need to continue to make our workplaces safer, to work together in that respect—industry, labour and government as partners, working together to ensure that workers are safe and that everyone who goes to work is able to come home safe and healthy.

1410

Again, I think your advocacy on this has been very, very important over the number of years that you've been involved, and we appreciate that, but there's going to need to be continued efforts, I'm sure. This bill is an important step forward in terms of a symbolic recognition of the responsibility we all have, but there's going to be more work to be done.

I don't really have any questions, but I certainly invite you to respond to what I've just said. I really appreciate your presence here today.

Mr. Vernon Edwards: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott. We'll now pass the floor to Mr. Hatfield.

Mr. Percy Hatfield: Good afternoon to you, sir. Thank you both for coming in today.

We talked about the MUSH sector. You mentioned the scaffolding fall on Christmas Eve a number of years ago, and the horrific injuries and deaths that came from that. There was a coroner's inquest and an investigation after that, and one of the recommendations was that there be more health and safety taught in the schools and examples given to make students more aware of the dangers they face on jobs. If every elementary and high school in Ontario had to lower the flag this would be a good teaching tool for those educators to take to their class-

rooms and say, "There are some of the examples from around here."

Would you not agree that there are many tentacles out there that would flow from this bill?

Mr. Vernon Edwards: I absolutely agree. I think that would create a very good opportunity to talk to young people about the hazards when they go out into work, particularly around high school students who may well be getting ready to start their first job. We know of far too many cases where young people on their first, their second or third day on the job are getting injured and killed, because not only do they not have the same life experience that older workers have but it may well be their very first job, so they have no job experience, period.

I think this bill would create very good opportunities to have those kinds of conversations with students, and hopefully with parents when they go home and talk about

what they did in school that day.

Mr. Percy Hatfield: I know we spend a lot of emphasis working with young people on "don't drink and drive" and "don't text and drive," but we have yet to put into their heads that when you go to work, you have to be aware of the health and safety conditions around you and more aware that if you're in an unsafe work environment, you can say, "Hey, wait a minute. This has to change and we have to stop work for a while."

Mr. Vernon Edwards: That's right. With students, they go from an environment in a school, where everybody has their well-being as one of their top priorities, to the private sector, where that's not always the case. Often it's about production; it's about getting the job done as quickly as you can and with very little health and safety training.

It's not always the case. There are some good employers out there that do a great deal of health and safety training before anybody sets foot into the workplace. But we see far too many examples of young people being badly injured or killed—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hatfield. The floor now passes to the government side:

Ms. Indira Naidoo-Harris.

Ms. Indira Naidoo-Harris: Thank you so much, Chair. I want to thank you, Mr. Vernon and Mr. Crevar, for coming in today to speak on such an important subject, and also for your advocacy on something that I know that is really important to workers in our province.

I want to tell you that I recently had the honour of participating in a special ceremony in my riding on April 28 to commemorate the National Day of Mourning for workers who have lost their lives, possibly injured on the job or killed on the job. It was a particularly emotional ceremony because there were a couple of people there, parents who were there, who had lost their son a number of years back and were there just coming to remember the child that they'd lost.

In addition, my riding of Halton touches on Oakville, as you know. David Ellis's story is well-known to those of us who are in that area. It's very much a part of some

of the work that we're thinking about when we think about Bill 180.

As you know, Bill 180 would require that all Canadian and Ontario flags outside legislative buildings, government of Ontario buildings and other buildings, like town halls, courthouses, schools, universities, colleges and hospitals, be flown at half-mast on that day.

I think that this is particularly important, as we've been hearing in the discussion, when it comes to young people. I have a 17-year-old and a 21-year-old, and I've got to tell you that yesterday, after hearing the minister speak on this subject and about the higher incidence—three times more likely—of young people to be injured on the job, I actually went home and talked to my 21-year-old.

So I need to ask you: Do you think that this bill will help us get that message across and help us shape the conversation about safety with young people, especially when it comes to the fact that these flags will flown at half-mast at schools, universities and colleges? Do you think that it will really encourage that conversation?

Mr. Karl Crevar: I believe that it will. I think that it's a message that has to be said throughout our community—not just to the children, but to the parents and to industry—that people are being killed in the workplace.

I use the analogy of Mothers Against Drunk Driving, MADD. That is the only way you draw public attention to it. I can tell you that just this past week, three injured workers—one is an amputee—bicycled from Windsor to Chatham, Sarnia, London, Brantford, Hamilton and St. Catharines to send that message. I believe that if this bill passes and gets that recognition, it will send a message that, within the workplace, people are being killed and that has to stop.

We also talk to students on many occasions. We'll go into the colleges and universities whenever we can and we'll talk to them. It's amazing when you find out—you ask them whether they've been actually hurt themselves—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris, and thanks to you, Mr. Edwards and Mr. Crevar, for your deputation on behalf of the OFL and ONIWG.

This committee is now in recess until 3 p.m. Eastern Standard Time.

The committee recessed from 1417 to 1500.

ONTARIO DOWN SYNDROME DAY ACT, 2016

LOI DE 2016 SUR LA JOURNÉE ONTARIENNE DE LA TRISOMIE 21

Consideration of the following bill:

Bill 182, An Act to proclaim Ontario Down Syndrome Day / Projet de loi 182, Loi proclamant la Journée ontarienne de la trisomie 21.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I call the meeting to order. As you know, we're

here to consider Bill 182, An Act to proclaim Ontario Down Syndrome Day.

DOWN SYNDROME ASSOCIATION OF HAMILTON

The Chair (Mr. Shafiq Qaadri): We have our first presenters ready on standby: Ms. Crowson and Ms. Stremble of the Down Syndrome Association of Hamilton. You might have seen the protocol. You have 10 minutes in which to make your opening address and then three minutes, by rotation, to each party.

I respectfully invite you to please begin now.

Ms. Jennifer Crowson: Good afternoon. Thank you for having all of us here today. My name is Jennifer Crowson. I am the president of the Down Syndrome Association of Hamilton. I'm also the proud mother of these three children that you see here in this photograph. Their names are Max, Ruaridh and Owen.

Four years ago, my life changed forever. My husband and I found out that our youngest son, Owen, was going to be born with Down syndrome. Before he was even born, I was told that there would be many things that my son might not do. I was told that he might not read, he might not write, he might not run and he might not even walk. I was told that my son would have an intellectual delay, which would limit his progress in school and, indeed, his progress in life. I was told that he might also have serious medical health issues.

What I was not told is that my son Owen would in fact enrich my family's life. I was not told that he would be more like his brothers than different. In fact, he's a lot like his older brothers. I was not told that he would amaze me every day with what he actually can do.

I knew then and I certainly know now that people with Down syndrome deserve the same human rights as everyone in this room and indeed every citizen of Canada. I am thrilled that Ontario has taken this initiative to bring Bill 182 into law and to allow us to use it to bring awareness and celebrate people with Down syndrome in Ontario.

What do we know about Down syndrome? It's a naturally occurring chromosomal arrangement that has been part of the human condition for a long time. We know that people with Down syndrome have three copies of the 21st chromosome, which is why we celebrate World Down Syndrome Day on March 21, being the third month and the 21st day. We know that with access to coordinated and comprehensive health care, early intervention and inclusive education, and with progressive social and medical research, that all of these things are vital to people with Down syndrome in allowing them to become full, contributing and active citizens.

As a parent and as the president of a local association, I am very grateful for what my son and other people with Down syndrome have received from the province of Ontario in terms of health, social care and education. However, we do know that people with Down syndrome have faced and do face discrimination in our province.

We know that people with Down syndrome do not always have the same full access to education as their peers. We know that people with intellectual disabilities are sometimes described as having limited academic potential. We know that there is not equity in funding for social and medical research on Down syndrome as there is for other disabilities. We also know that many people with Down syndrome face barriers as they transition into adult life, in achieving full independence and paid employment.

In December 2011, the General Assembly of the United Nations declared March 21 as World Down Syndrome Day. It invited all other member states to observe World Down Syndrome Day in an appropriate manner. As I said earlier, I am delighted that the Ontario government has shown leadership in Canada in taking steps to have World Down Syndrome Day formally recognized.

As a parent, an advocate and the president of a local association, I hope that World Down Syndrome Day will signify enhanced awareness and authentic inclusion in all spheres in the lives of individuals with Down syndrome across their lifetime. This day will hopefully bring more recognition to those individuals with Down syndrome, and recognition of those with Down syndrome as individuals with unique strengths and challenges and as individuals who are part of our ever-increasingly neurodiverse social fabric and who are not more different than other people without Down syndrome.

In Hamilton, we have celebrated World Down Syndrome Day for the past two years with a celebration open house. Last year, we had the delightful pleasure of having this young lady beside me, Laura Stremble, speak to all of our members who were present, as well as members of our community, about education and about what education has meant for her and about what inclusion has meant for her. I thought it really appropriate to have her come along with me today and tell you herself what she told us on World Down Syndrome Day this past year. So without further ado, I'm going to let Laura introduce herself and speak to you. Thank you very much for your time.

Miss Laura Stremble: Good afternoon. My name is Laura Stremble. I'm almost 15 years old. I live at my home in Dundas with my mom and dad, my big brother John and my dog. I am in grade 9 at St. Mary Catholic Secondary School.

The word "inclusion" means to be included, to be part of a group. At my schools, I have always felt included and have always felt a part of my school community. At St. Augustine, Ms. Castelli, my dedicated EA, and Ms. Scime, the principal, both encouraged me to do everything the other kids did, including science fair and scripture reading competitions, where I won at both. I even tried out for the touch football team and might have made it, but practices were the same night as my Special Olympics rhythmic gymnastics. I got to show off my gymnastic routines every year at the talent show, just like anyone else with a talent. I collected volunteer hours, just

like everyone else, by volunteering at Staples and JYSK with Special Olympics, and at my church, St. Augustine's, working on the gardening committee, development and peace dinners, and working the plant sales and bazaars. I had more volunteer hours by the end of grade 8 than most other students. When I graduated grade 8, I won the Christian Community Service Award and made honour roll.

Now, at St. Mary high school, I share a different EA with a few other students in each class. I am not in a life skills class. I take math, science, geography, history, religion, English, gym, drama and art with the main student population. Two of my classes are locally developed and some are applied, but most are just regular open classes. I get homework just like everyone else; I just forget to bring it home sometimes. I am required to get 40 volunteer hours by grade 12 at St. Mary too, and am already over that total in grade 9. I have about a 78% average. I love school. I have lots of friends and great teachers and EAs.

It is sad to think that 60 years ago, my third cousin Michael, who was born with Down syndrome, was never allowed to go to school and was never given the chance to work. Actually, the doctors wanted his mom to put him in an institution and forget about him.

I am glad the school board decided that I'm worth an education. I can read and write, just like the other students; I just need a little more time sometimes. I learn from my peers how to behave, like any student who does not have Down syndrome. If I were only with specialneeds students, I might learn the wrong ways to act.

I think other students are lucky to have me and others like me in their classes. It teaches them empathy and patience. It is a win-win situation.

In conclusion, I want you all to realize that most of the time I feel included, but when I don't, that is their loss.

The Chair (Mr. Shafiq Qaadri): Thank you very much. Just before I offer the floor to the PC side, Laura, I think you should be standing for Parliament at some point in the future.

Mr. Pettapiece: three minutes.

Mr. Randy Pettapiece: That's quite a story. It's very interesting and shows what can be done.

I just want to tell you a story about what happened to my wife and I a few years ago. We have a decorating business, and we were working in a home with a child with Down syndrome, a personable little girl. She was just a sweetheart to work around. We decided to go outside for our lunch at that time, so we covered our tools up with some blankets. When we came back, we couldn't find things. So we asked the mother what happened, and she said, "Well, you didn't put your tools away, so my daughter did it for you. She said, 'You're supposed to put your tools away and not leave them out where somebody could get hurt." That was quite an interesting—

Ms. Jennifer Crowson: They don't miss a trick.

Mr. Randy Pettapiece: Exactly. It brings to light that we need to work with people with disabilities, because if we don't, they don't reach their full potential. That's

certainly something that I know our party is in agreement with.

Thanks so much for coming out here. That's quite a story. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Pettapiece. To Mr. Hatfield.

Mr. Percy Hatfield: Good afternoon, Laura and Jennifer. Thank you for being here. What are your plans for March 21 next year?

Miss Laura Stremble: Well, I don't know yet. I was thinking of going to Mohawk College when I graduate.

Mr. Percy Hatfield: And on Down Syndrome Day next March, do you have any plans of any kind for a celebration or a recognition of the day?

Miss Laura Stremble: Well, in August, it will be my birthday, so yes.

Ms. Jennifer Crowson: I think what we will probably do as an association—and we hope that Laura participates with us—is have another open house celebration. If this bill becomes law, that might become somewhat of a theme of our day, just how exciting that is for Ontario.

Laura mentioned that she's hoping to go to college. Education is something that we are really interested in promoting in our association. We've focused a fair amount on elementary and high school, but college/university is sort of our next frontier.

We use days like World Down Syndrome Day to really highlight these areas where we need to continue advocating for people with Down syndrome to achieve full participation. I'm not sure what our theme will be yet, but we'll think of something.

Miss Laura Stremble: Also, I've asked Jennifer about Rock Your Socks, too.

Ms. Jennifer Crowson: Yes, Rock Your Socks. Do you want to explain that, Laura?

Miss Laura Stremble: It's where you have to wear three socks and take a picture.

Ms. Jennifer Crowson: Yes, on World Down Syndrome Day. It's called crazy socks.

Miss Laura Stremble: It's different socks you wear—one on each—and rock your socks.

Ms. Jennifer Crowson: Yes, that's a kind of World Down Syndrome Day thing that people have done on social media as a way of celebrating and bringing attention to the conversation.

Mr. Percy Hatfield: Laura, when you go to college, what is it you'd like to do?

Miss Laura Stremble: I have done science fair and scripture reading. I've won both.

Mr. Percy Hatfield: All right, thank you.

Ms. Jennifer Crowson: So science might be in your future.

Miss Laura Stremble: Maybe.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hatfield. To the government side: Mr. Dickson.

Mr. Joe Dickson: I would first of all like to acknowledge Jennifer and Laura for that presentation.

I think a lot of you will remember, because there are three presenters coming forward today, that Jennifer—who is older than Laura maybe by a year and very complimentary at the microphone—her son, Owen, her good friend Ingrid Muschta and her son, Alexander, were here for the last reading, which was second reading. I compliment you because it's a long way from Hamilton to spend a whole day here and then you get back home at night.

Mr. Chair and fellow colleagues, we're making progress with everything we do. We're now looking at November 1 to November 7, which would be Down Syndrome Week. As I indicated that day that the Legislature gave an automatic unanimous approval, I wanted to use representation from both of the other two parties so the three of us can go forward and present it jointly, representing all parties.

I thank you for being here. Please say hi to Owen for us when you get home.

Ms. Jennifer Crowson: I will do.

Mr. Joe Dickson: I'm sorry, dear; I mixed you up with that lady behind you. I thought she was your sister because you're both about the same age.

Miss Laura Stremble: Okay. In case you haven't noticed, she's not my sister; she's my mother.

Laughter

Mr. Joe Dickson: Yes, dear. Thank you. I appreciate

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Dickson, and thanks to you, Ms. Crowson and Miss Stremble, as well as your parents, for your very compelling presentation on behalf of the Down Syndrome Association of Hamilton. Thank you very much.

Ms. Jennifer Crowson: Thank you for your time.

DOWN SYNDROME ASSOCIATION OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward: Ms. Reid and Ms. Wright of the Down Syndrome Association of Ontario. Thank you, colleagues.

You've seen the protocol: a 10-minute opening address, and then rotation questions. Please begin now.

Ms. Deb Reid: Thank you. My name is Deb Reid. I'm the executive director of the Down Syndrome Association of Peterborough, where I've worked for 14 years. We have an office there. As well, I am the new chair of the Down Syndrome Association of Ontario. I'd like to talk a little bit about the history of Down syndrome as well as the Ontario association.

For centuries, people with Down syndrome have been alluded to in art, literature and science. It wasn't until the late 19th century, however, that John Langdon Down, an English physician, published an accurate description of a person with Down syndrome. It was this scholarly work, published in 1866, that earned Down the recognition as the "father" of the syndrome. Although other people had previously recognized the characteristics of the syn-

drome, it was Down who described the condition as a distinct and separate entity.

In recent history, advances in medicine and science have enabled researchers to investigate the characteristics of people with Down syndrome. In 1959, French physician Jérôme Lejeune identified Down syndrome as a chromosomal condition. Instead of the usual 46 chromosomes present in each cell, he observed 47 in the cells of individuals with Down syndrome. It was later determined that an extra partial or whole copy of chromosome 21 results in the characteristics associated with Down syndrome. In the year 2000, an international team of scientists successfully identified and catalogued each of the approximately 329 genes on chromosome 21. This accomplishment opened the door to great advances in Down syndrome research.

Due to advances in medical technology, individuals with Down syndrome are living longer than ever before. In 1910, children with Down syndrome were expected to survive to age nine. With the discovery of antibiotics, the average survival age increased to 19 or 20. Now, with recent advancements in clinical treatment, most particularly corrective heart surgery, as many as 80% of adults with Down syndrome reach age 60 and may live even longer. There are approximately 3,500 people in Ontario with Down syndrome.

The Down Syndrome Association of Ontario is made up of representatives from local organizations across Ontario. The organization has been around since 1989. We have representation from local organizations in Ottawa, Peterborough, Durham, Kingston, Owen Sound, Sudbury, Niagara Falls, Halton, Peel, Brampton, Waterloo, London, Sarnia, Toronto, Barrie, Hamilton, Brantford and York. We meet a number of times in-house as well as through conference calling throughout the year to discuss pertinent issues involving the local groups and the individuals with Down syndrome.

As Jennifer alluded to the general assembly, I also wanted to pass along a quote that was read by Secretary-General Ban Ki-moon from the United Nations:

"We believe that people with Down syndrome should be allowed to pursue meaningful lives in their communities. We believe that all aspects of society should accept and include individuals with Down syndrome fully. We believe that new and expectant parents should have access to the latest, most accurate information about having and raising a child with Down syndrome. We believe that people with Down syndrome should not be defined by their disabilities, but rather should be celebrated for their abilities. We believe that people with Down syndrome deserve every opportunity for an education that truly meets their needs, a good job that allows them to earn money, quality health care that doesn't discriminate and a fulfilling social life. Ultimately, we believe that each person with Down syndrome should be honored as the individual he or she is and for the immeasurable value they bring to the world.

"We believe in the future of all people with Down syndrome and pledge to do everything in our power to ensure that they have the opportunities they so richly deserve."

A person with Down syndrome can lead a very full life with the right supports. Some people with Down syndrome can speak more than one language or play a musical instrument. Some have multiple awards from the Special Olympics. Others live independently, go to college, hold jobs, get married and volunteer in their community. We must always remember that people with Down syndrome are brothers, sisters, aunts, uncles, friends and children throughout their communities and dream exactly the way you do.

Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you. You're done?

Ms. Deb Reid: Yes.

The Chair (Mr. Shafiq Qaadri): All right, thank you very much. We'll invite the NDP to begin. Mr. Hatfield?

Mr. Arthur Potts: Excuse me. A point of order: I think the other presenter-

Ms. Donna Wright: I am speaking too.

The Chair (Mr. Shafiq Qaadri): Please do. That's what I was waiting for. Go ahead. You have five minutes.

Ms. Donna Wright: The Down Syndrome—

Mr. Joe Dickson: Her name is Donna, the same as my wife. You can't go wrong.

Ms. Donna Wright: My name is Donna Wright. I have a daughter, Kassandra Wright, who is 21. We have met with Joe and were introduced—yes.

I have a number of years on the Down Syndrome Association of Ontario board, roughly 15. I think I've held

all the executive positions at least once.

Issues over the years with Down syndrome: The biggest struggle has been the amount of paperwork and knowing when, what and why to complete it-for example, wills, Henson Trust funding, ODSP, Developmental Services Ontario, etc. There are a great number of times we need to prove that his or her disability is not going away, and times we require doctors' notes to prove he or she still has a disability.

After school, for example, they're eligible for the ODSP benefit, roughly \$865 a month, which is about \$11,000 a year for an adult, which proves to be poverty level. There are work employment supports. There are ongoing struggles to obtain these supports through the ODSP office. For example, it took four months and my continued persistence, taking my daughter in, in order to

get employment supports.

Through the school years, the school boards—there's no real funding for speech pathologists in there, and occupational therapists, or a very minimal amount per person per year. Basically, you get to consult, if you're lucky, with the speech path or the occupational therapist once per year. A great number of families cannot afford speech pathologists—they start at approximately \$150 an hour-and it's essential for individuals to be able to communicate. There's an ongoing struggle to maintain educational assistants during the school years. They're

continually cutting EAs, as everyone in this room is aware, so it's an ongoing fight to share.

From newborn to school age, the average support varies, depending on the region you live in. Families are struggling to work—a lot of them—and support other siblings and to cope with the disability in general.

As mentioned, our daughter, Kassandra, is 21. She has been lucky enough to secure a position with Youth the Future. It's a government-run, paid program. She started in April. It's a 23-week work program: eight-week job readiness, in which they learn WHMIS, first aid and have the chance to study, prepare and take all the tests, along with Smart Serve; and then they are working on a 15week job placement. So they're doing resumés and cold calls. She was in for an interview yesterday; she's at another one today.

She has had many accomplishments over the years. She has excellent speech and communication skills, thanks to her parents' investing in her. She participated in the Special Olympics spring games this past weekend in Guelph. She has participated in basketball. I have a fourpage handout with colour pictures that I gave everybody. On World Down Syndrome Day, March 22, she was asked to make a speech at St. Bernard school in Whitby. She completed a four-minute PowerPoint presentation to the school. She has been competing in the Special Olympics spring games, as I just mentioned. She graduated from grade 12 last November, and there's a nice picture with her in her graduation dress, with her two brothers. Kassy also completed a 10-minute presentation at the Down syndrome conference in Barrie last October, at the Horseshoe Resort.

The Chair (Mr. Shafiq Qaadri): About a minute left. Ms. Donna Wright: Okay. She has done co-ops through high school, has participated in dance recitals, and the provincial games in 2010.

The Chair (Mr. Shafiq Qaadri): Thank you very

much. We now pass to the NDP. Mr. Hatfield?

Mr. Percy Hatfield: Thank you for the presentation. I was shattered when I didn't hear Windsor's name in that long list of where you have associate members. What's the problem with Windsor?

Ms. Deb Reid: Well, they come and they go.

Mr. Percy Hatfield: There's nobody there currently who wants to be part of the association?

Ms. Deb Reid: No, we don't have somebody from Windsor.

Mr. Percy Hatfield: All right.

Ms. Donna Wright: We'd love to, if you want to make the connection.

Ms. Deb Reid: Yes.

Mr. Percy Hatfield: Let me, if I could, just ask your opinion on sheltered workshops. Is that a good thing or not a good thing?

Ms. Deb Reid: We were talking about that today at

lunch. Personally, I think it's a wonderful idea.

I did a presentation—we were a charity of choice at a golf tournament last Saturday evening in Pickering and I spoke about our organization. A gentleman came up

beside me and he said, "I have a brother with Down syndrome. He's 63 years old and he just retired from his 40 years at a sheltered workshop." He sort of moved his way up from doing piecemeal work to whatever he was doing.

I said, "How exciting." He said, "He loved getting out of bed every day and going to work, and that was his job." To him, that was a very valued reason to get out of bed. But his family knew where he was every day. He was safe. He was busy. They kept his mind going.

I think it's wonderful for those who want to attend those types of programs. There are other individuals who want to go into the community, but they may not have the support or the ability to do that sort of thing. There are some wonderful sheltered workshops around. Unfortunately, they're closing.

Mr. Percy Hatfield: In some parts of the community, they say people are being taken advantage of if you're not paying them \$20 an hour, if you're only paying them \$10 or whatever the numbers are, and that's why they're getting rid of them. I was just wondering what your

opinion was.

Ms. Deb Reid: Like I just said, Donna and I were just speaking about this. In a sheltered workshop situation, they are there with their friends and their peers. They are going to social events and recreational events. It's nice that they go out into the workplace and it's nice that they are treated equally. They participate in work-related programs and parties and whatever, but at the end of the day when they go home, their friends are still people like them.

We hang out with people who are like us and who we want to hang out with. I think they should be allowed to hang out with people who they want to hang out with.

Mr. Percy Hatfield: Thank you. Ms. Deb Reid: You're welcome.

The Chair (Mr. Shafiq Qaadri): To the government side, to Mr. Dickson.

Mr. Joe Dickson: I'd just like to mention a couple more items about the three presenters here today. The young lady in red, as she indicated, is Deb Reid from the Peterborough area. Most of these ladies have held high executive positions. Obviously, the parents are always active. The mothers drive it.

I have Marc sitting at the back, who is my EA. He's working on a project where we have to deal with the federal government to, hopefully, put in place by the end of this year the week for Down syndrome, which is November 1 to November 7.

I should mention, while I've got everyone here—or some representation—just the fact that it was unanimous in the vote on second reading on the floor. It indicates to me how supportive all parties were on this. So don't look to me; look to everybody who was there, because they're the people who make it happen.

In addition to Debbie, I have to tell you, she chased a fellow by the name of Jeff Leal out of Peterborough 14 to 15 years ago and got a Trillium grant to start a process up there to make it happen. I tip my hat to them, and I think

I did acknowledge that when we first spoke to it on the floor.

The other young lady beside her, of course, is—it's easy for me to remember her name—Donna. Yes, that's right; my wife's name is Donna as well. Donna and Bruce have three children. When you at that picture, I think this young lad here on your left is maybe a foot taller than me. He's just a giant. You can see that both big boys look after their little sister. They have been great.

The sister's name is Kassy, as her mother indicated. She's graduating from high school. The puppy, which is a multiple Shih Tzu breed—her name is Tasha. They're just a wonderful family. They work for their children and

they live every day for their children.

I can tell you that I'd like you to take a thank you back to Ingrid, who was here that whole day the last time, and Alexander, because you ladies are the people who are making it happen. We want to be part of whatever you do. Every party represented here today has strong feelings about helping people. We wouldn't be doing it unless you were here today. Without you, we are nothing, so, from my perspective, a very sincere thank you.

Thank you, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Dickson. To the PC side and Mr. Arnott.

Mr. Ted Arnott: Thank you very much, Mr. Chair. Thank you very much for your presentation, too. It's very helpful to have your input with respect to this important issue. Certainly, our caucus has been supportive of Bill 182 and we would congratulate Mr. Dickson on bringing it forward. Our caucus concurs that this is a good idea.

But there are still lots of issues. I think that you've outlined in your brief some of the most important ones that we need to work on together in the months and years

going forward.

I was glad that Mr. Hatfield brought up the issue of the sheltered workshops. I had an opportunity to tour ARC Industries in Guelph just before Christmas last year when the concern was probably at its height about the future. The Ministry of Community and Social Services—I think there have been some meetings in the Guelph area to further discuss where we're going to go on this.

My impression was that the activities at the sheltered workshop at ARC Industries are very, very important to the families and the clients and we've got to find a way to ensure that those kinds of programs can continue. I didn't hear any complaints and I didn't see anybody objecting to how it was being run, but I did see a lot of very happy people who were delighted to be there participating fully in the programs. Again, that was the impression that I was left with.

Do you have any further comments on the ongoing

discussions and where we're going with that?

Ms. Deb Reid: I do, and I think it's important that that comment is based on my personal comment as well as our local organization in Peterborough, because what we're finding is—I think last year we had 957 students graduate from high school. Of those, there are probably 800 sitting in their basements because there's nowhere

for them to go. Some of them went to college, some of them are at home with a parent or with grandma, some of them were fortunate enough to get a volunteer position or a paid position. But 70% or 80% of those children are sitting at home in the basement, and that's not where they belong.

I think that ARC Industries has done a great job in every city. I know they've been around everywhere and they have done—but even in Peterborough, ARC Industries is closed and Community Living has sort of taken over some of that. We need a place for these young people to be during the day, to feel wanted and to feel important and have a reason to get out of bed in the morning.

Ms. Donna Wright: And a lot of people who don't have a place to go are sitting at home, like Deb said. Then the other part is that parents are paying anywhere from \$1,200 to \$1,500 a month for them to participate in a program someplace else. As I mentioned, they're bringing in roughly \$865. So the coverage doesn't—

Mr. Ted Arnott: Match.

Ms. Donna Wright: And they really do want to belong. Every one of them probably belongs in a slightly different category, but they need to belong someplace.

The Chair (Mr. Shafiq Qaadri): Thank you very much, Mr. Arnott, and thanks to you, Ms. Reid and Ms. Wright.

Mr. Randy Pettapiece: Chair, do I have any time left?

The Chair (Mr. Shafiq Qaadri): Not really, but go ahead, Mr. Pettapiece.

Mr. Randy Pettapiece: I was just going to comment that anybody who can chase Mr. Leal around and get something from him—we need to hire you.

Ms. Deb Reid: We went to high school together, actually.

Mr. Randy Pettapiece: Oh, is that right?

Ms. Deb Reid: I've known him for a long, long time.

The Chair (Mr. Shafiq Qaadri): Thank you very much, Ms. Reid and Ms. Wright, for your deputation.

Colleagues, that brings us to the conclusion of today. Friday at 12 noon is the deadline for filing amendments. Committee will reconvene on Monday at 2 p.m. for consideration of clause-by-clause on all three bills: 149, 180 and 182.

The committee is now adjourned. *The committee adjourned at 1534.*

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Standing Committee on Justice Policy

Rowan's Law Advisory Committee Act, 2016

Workers Day of Mourning Act. 2016

Ontario Down Syndrome Day Act, 2016



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Monday 6 June 2016

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Lundi 6 juin 2016

The committee met at 1400 in committee room 1.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I officially call the justice policy committee to order. As you know, we are here for a triple-header: Bills 149, 180 and 182—Rowan Stringer, Workers Day of Mourning and Ontario Down Syndrome Day.

ROWAN'S LAW ADVISORY COMMITTEE ACT, 2016

LOI DE 2016 SUR LE COMITÉ CONSULTATIF DE LA LOI ROWAN

Consideration of the following bill:

Bill 149, An Act to establish an advisory committee to make recommendations on the jury recommendations made in the inquest into the death of Rowan Stringer / Projet de loi 149, Loi créant un comité consultatif chargé d'examiner les recommandations formulées par le jury à la suite de l'enquête sur le décès de Rowan Stringer.

The Chair (Mr. Shafiq Qaadri): We will begin by considering Bill 149 with reference to the death of Rowan Stringer, officially known as An Act to establish an advisory committee to make recommendations on the jury recommendations made in the inquest into the death of Rowan Stringer.

Do we have any comments before we proceed to the clause-by-clause consideration of these bills? If not, I invite the first motion to be presented by the government. Mr. Fraser.

Mr. John Fraser: I move that subsection 2(2) of the bill be struck out and the following substituted:

"Membership

"(2) The committee shall be composed of no more than 15 members appointed by the Minister of Tourism, Culture and Sport and shall consist of the following:

"(a) No more than three persons nominated by the Minister of Children and Youth Services.

"(b) No more than three persons nominated by the Minister of Education.

"(c) No more than three persons nominated by the Minister of Health and Long-Term Care.

"(d) No more than three persons nominated by the Minister of Training, Colleges and Universities.

"(e) No more than three persons nominated by the Minister of Tourism, Culture and Sport."

The Chair (Mr. Shafiq Qaadri): Any comments?

Let me just back up. We need to just go through section 1 for which, so far, no motions have been presented. Can I take it as the will of the committee that section 1 has carried? Carried.

Ms. MacLeod, you have the floor.

Ms. Lisa MacLeod: I just wanted to say thank you to the government for bringing this forward. I think it improves the bill in order for us to encourage the Ministry of Training, Colleges and Universities to be part of this. It has strengthened the bill.

While we're concerned primarily with youth concussions in sport, I think it's important that all amateur athletes in Ontario are protected, and certainly, that means those on our university campuses.

As the introducer of the bill, I support the introduction of this motion by my colleague and co-sponsor of the

The Chair (Mr. Shafiq Qaadri): Any further comments on government motion 1 before we proceed to the vote? Mr. Fraser.

Mr. John Fraser: I do want to say one thing. This was very much a very collaborative effort, and although it's a government motion that is being put forward, it is, indeed, actually a motion by all of the committee, and it was worked out last week.

The Chair (Mr. Shafiq Qaadri): I salute the new spirit of collegiality, Mr. Fraser and Ms. MacLeod.

Mr. Hatfield, would you like to make any comments?

Mr. Percy Hatfield: Thank you for the opportunity. Good afternoon. I would just like to say that I'm in full support of what has been proposed.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote. Those in favour of government motion 1? Those opposed? Government motion 1 carries.

We now move to government motion 2. Mr. Fraser.

Mr. John Fraser: We withdraw that motion.

The Chair (Mr. Shafiq Qaadri): To repeat, government motion 2 has now been withdrawn.

We now proceed to government motion 3. Mr. Fraser.

Mr. John Fraser: I move that subsection 2(5) of the bill be struck out and the following substituted—

The Chair (Mr. Shafiq Qaadri): Mr. Fraser, you're missing the letter (b) there.

Mr. John Fraser: I move that clause 2(5)(b) of the bill be struck out and the following substituted:

"(b) review legislation, policies and best practices from other jurisdictions respecting head injuries;

"(b.1) make recommendations on how to implement the jury recommendations, how to prevent and mitigate head injuries in sports and how to create awareness about head injuries in sports; and"

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? Ms. MacLeod.

Ms. Lisa MacLeod: Again, as the person who introduced the bill, I support this government amendment. As my colleague Mr. Fraser said, he and Catherine Fife, our other co-sponsor, and I were involved with this.

Just in terms of rationale, it's important that we strengthen that recommendation on the jury recommendations and how they would be implemented. But I think that it's also important—and this is something that we've found over the past year as we've been engaged in this legislation—that Ontario will become Canada's first jurisdiction with concussion legislation. But there are other places, particularly in every single state in the United States, that are engaged in concussion awareness and better protocols, so I think that this is a welcome addition, as we encourage this committee that is going to be set up to look south of the border and perhaps elsewhere around the world to ensure that our athletes and others who may have a concussion are best protected.

I support it and I thank them and my staff, as well as Catherine's and John's, and the government House leaders for initiating this.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod.

Any further comments before we proceed to the vote? Seeing none, those in favour of government motion 3? Those opposed? Government motion 3 carries.

Shall section 2, as amended, carry? Carried.

We've received no motions or amendments for sections 3, 4 and 5 en bloc. May we consider them en bloc? Shall sections 3, 4 and 5 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 149, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Agreed.

Thank you, colleagues. We have now officially disposed of Bill 149. We congratulate all those involved.

Applause.

The Chair (Mr. Shafiq Qaadri): I once again salute one of my former professors, Professor Charles Tator of neurosurgery at Toronto Western Hospital and University of Toronto, for his leadership in this role.

WORKERS DAY OF MOURNING ACT, 2016

LOI DE 2016 SUR LE JOUR DE DEUIL POUR LES TRAVAILLEURS

Consideration of the following bill:

Bill 180, An Act to proclaim a Workers Day of Mourning / Projet de loi 180, Loi proclamant un Jour de deuil pour les travailleurs.

The Chair (Mr. Shafiq Qaadri): We now move to Bill 180, originally introduced by Mr. Hatfield, An Act to proclaim a Workers Day of Mourning. I believe that we have received no amendments or motions.

Mr. Hatfield, would you care to make a comment?

Mr. Percy Hatfield: Thank you for the opportunity, Chair. I would just like to thank all members of the committee today for their consideration of this bill. It was supported unanimously in the House, as you know, at second reading. It just puts in compliance a standardization that all schools—especially schools—will fly the flag at half-mast on April 28, the Day of Mourning. It's been my experience in Windsor that one board would do it and the other one wouldn't. They may fly it at half-mast at the board office but not at the schools.

Part of the purpose of the bill is as a teaching tool. We've heard from elsewhere that this could be used in the schools to create more awareness for young people getting into a job for the first time, being aware of the health and safety on their shop floor, the restaurant floor, whatever it is. If we can do anything to raise the consciousness of health and safety, then we've accomplished something.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hatfield.

Any further comments on Bill 180 before we proceed to—Ms. Martins?

Mrs. Cristina Martins: I just wanted to thank the member opposite for introducing this bill and engaging in what I believe is an important debate on this issue.

As you know, I represent a riding that is home to many Italian and Portuguese immigrants who came to this country many years ago. Many of them, to make ends meet—perhaps not having the language skills at the time—worked in the construction industry, and many of them were victims, as it turns out, of injuries in the workplace. So I do support the formal recognition of April 28 as the Workers Day of Mourning and I want to congratulate the member opposite for bringing this forward.

The Chair (Mr. Shafiq Qaadri): Thank you. Any further comments on Bill 180 before we proceed to—Mr. Fraser?

Mr. John Fraser: I would just like to thank the member from Windsor–Tecumseh for bringing this bill forward. I think that it's critical in continuing to raise awareness of our workplace injuries and unnecessary workplace deaths.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments? Seeing none, shall sections 1, 2, 3, 4 and 5 of the bill carry? Carried.

Shall the title of the bill carry? Carried.

Shall the preamble carry? Carried.

Shall Bill 180 carry? Carried.

Shall I report the bill to the House? Carried.

Congratulations, Mr. Hatfield.

Applause.

ONTARIO DOWN SYNDROME DAY ACT, 2016

LOI DE 2016 SUR LA JOURNÉE ONTARIENNE DE LA TRISOMIE 21

Consideration of the following bill:

Bill 182, An Act to proclaim Ontario Down Syndrome Day / Projet de loi 182, Loi proclamant la Journée ontarienne de la trisomie 21.

The Chair (Mr. Shafiq Qaadri): We're now considering Bill 182, An Act to proclaim Ontario Down Syndrome Day, originally proposed by MPP Joe Dickson. Again, we have received no motions or amendments. Are there any comments any members would like to make before we proceed to the consideration of the vote? Mr. Potts.

Mr. Arthur Potts: Yes, I would just like to take a moment to commend member Dickson for this bill. I know it's an issue that has been foremost in his mind. I know he wished he could be here to speak to it directly,

but kudos to him and kudos to the House for supporting

The Chair (Mr. Shafiq Qaadri): Any further comments from any other colleagues? Seeing none, with reference to Bill 182, shall sections 1, 2 and 3 carry? Carried.

Shall the title of the bill carry? Carried.

Shall the preamble carry? Carried.

Shall Bill 182 carry? Carried.

Shall I report the bill to the House? Carried.

Thank you, colleagues. I believe that is a world record which I hope will stand.

If there are no further benign comments or any other expressions of collegiality—yes, Mr. Fraser?

Mr. John Fraser: I just want to congratulate you on a very well-run meeting. That's about three minutes and 20 seconds a bill.

The Chair (Mr. Shafiq Qaadri): Your congratulations are both deserved and accepted. Thank you, Mr. Fraser

The committee adjourned at 1411.





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